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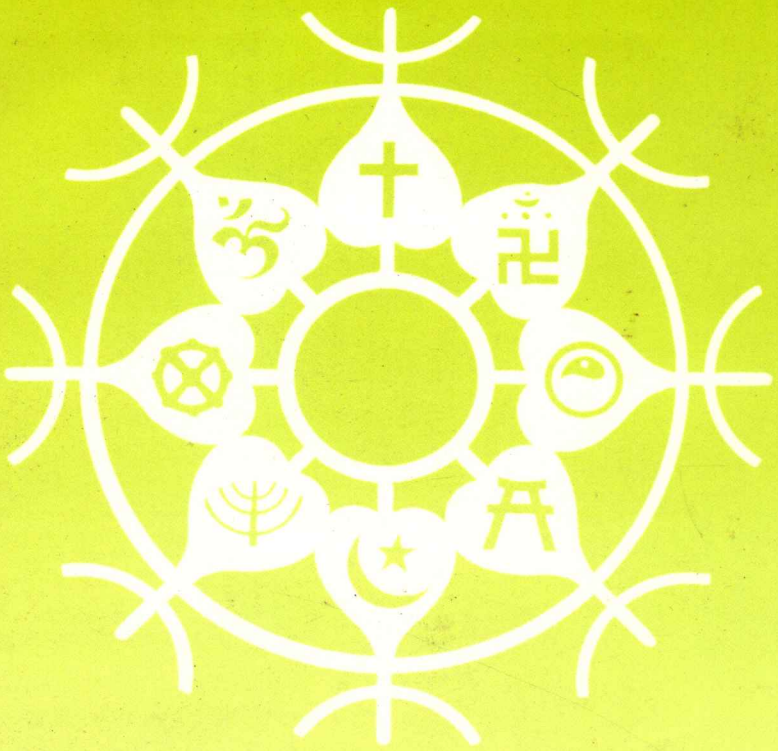

RELIGION AND LAW
Forces of Liberation

July-September 2007 Vol. 32, No. 3

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Editorial

RELIGION AND LAW
Forces of Liberation?

Religion and law, as generative agents of meaning and order in personal as well as social existence and as products of human civilization, have been two concomitant powers in almost every human society. There wouldn't be any exaggeration in saying that they represent two indispensable dimensions of human existence. Just as air and water are essential for sustaining life, religion and law – in their varied forms of transcendence and immanence – are necessary to live a life proper to human nature. In fact, these two agents have played crucial roles in enabling humanity spread its wings and fly over the horizons, untouched by pitfalls, contributing their might to navigate humanity through the multifaceted life and its patterns.

Religion and law are existential realities in the social and personal lives of human beings. While religion opens up the needed horizon for loving and lasting relation between the Divine and the human beings, law functions as a guardian of the right rhythm in the dynamics of its operations. In other words, as law embodies the moral ought in externally enforceable legal codifications, religion enhances it through its dynamic meaning-giving modes of operation. As James Nafziger, basing on Mircea Eliade's findings, puts it, "as ethical systems, both law and religion address the global order in a profound manner; both are concerned with the manner in which we accept and organize the world and the universe around us."[1] In fact, religion remained as the basic inspiration in many cultures across the world, especially in enabling the code of law accepted by the people to become a basic pattern of living, leading to social cohesion and cultural maturity.

Apart from their mutually supportive roles, we find that religion and law have a lot in common. They accomplish development of a worldview or perspective of life by way of inspirational wisdom and legal codifications, both of which could be found enshrined in the ancient

[1]James A. R. Nafziger, "The Function of Religion in the International Legal System," in *Religion and International Law*, eds., Mark W. Janis and Carolyn Evans, The Hague: Martinus Nijhoff Publishers, 1999, 159. See also Mircea Eliade, *The Sacred and the Profane*: *The Nature of Religion*, trans. Williard R. Trask, New York: Harper and Row, 1957, 29.

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scriptures of various religions. Thanks to their incessant operations, they have mechanisms to instil a consciousness of rights and duties based on the accepted worldview. In fact, they succeed in establishing and maintaining social order, leading to the formation of cultures and civilizations. Moreover, in cases of individuals going astray from the accepted patterns, they maintain mechanisms to enforce a return and re-establishment of the neglected or lost order. Thus, these forces, through spiritual counsel or punitive norms, have been capable of animating individuals to establish and maintain mutually enhancing relationships with other individuals as well as communities.

Religion and law may complement and contradict with each other as both of them are sources of rule making. They have exercised significant role in moulding or framing the consciousness of individuals as well as societies covering the spheres of private and public life. Engendering of religion and law in human society expects to enhance the good in human life. The authority commanded by both of them fundamentally originates from among the people who express their allegiance and acceptance of various worldviews for attaining the common good, whether it belongs to the material or spiritual realm. Proactive and successful religions and legislations remain participative, as their dynamics arise from a communitarian nature inbuilt into their structures, experience of fundamental equality among the members, and the respect for personal discernment on the part of individual participants.

As very closely associated functions of human life, these two realms probably received their distinctive identities only in the course of developing human consciousness and, as a result, have assumed almost specific natures and functions in the modern thought. Although both these contribute to the enhancement of personal integrity and social cohesion, in the course of time, their dynamics were distinguished and territories demarcated to such an extent that religious as well as secular societies consider them to be different in character and competence, sometimes even putting in place a watertight compartmentalisation within their territories and reach.

Many factors, including human creativity and imagination, have played an indispensable role in the development of religion; it has not merely been a product of divine revelation; in fact, most of the teachings and practices now associated with any particular religion have resulted from human understanding, creativity, ability to transcend the limiting conditions of the present, and an ever-vibrant futuristic thrust shared by a

group of people. Religion in its ideal state of affairs attempts to unite and liberate people who are otherwise said to be scattered and fettered through the isolating tendencies resulting from egotism or self-indulgent personal goals. This emancipatory role is facilitated by inviting those who subscribe to the particular worldview of a religion to live in conformity with a set of precepts enshrined in the scriptures or traditions ensuing therefrom.

In practical terms, religion provides the ambience for mutual knowledge and understanding among different individuals, facilitated around a commonly acceptable faith content, acceptance of which would accentuate intense and stable relations through periodic gatherings for prayer/worship and cooperation in works of common interest, including humanitarian concerns. In the context of a communion emerging from a commonly shared faith experience, there evolve social patterns and standardization; naturally, it is here that we find the need of introducing law within a religious setup. When law is closely and foundationally promoted by a religion, especially through its sacred scriptures, it would become the 'rule of life' commonly cherished by the votaries of a particular religious tradition. A cross-fertilisation that happens through the close collaboration between religion and law ultimately culminates in the generation of a living environment that would promote the good of individuals as well as that of the whole society.

Genuine religious systems, on the one hand, impart meaning into all that is brought under their purview and, on the other, make all that is brought under their wings also 'hallowed'. Although religion would provide legitimisation to a legal system and would enable internal motivation for the same, it may become a victim of rigid standardization, sometimes even without providing a logical framework and rational justification. For, sacred legitimisation claims to be overwhelmingly powerful in the case of the believers of a particular religion; moreover, such a legitimization also introduces the impossibility of change and amendments, by asserting that it is so given by the divine law giver, although in truth everyone knows that all human legal mechanisms, whether promulgated by religious or secular authorities, are all human made or, at least, received in human patterns. That is, some religious

legitimisations that resist change or modification, in certain instances; can turn out to be irreligious in content and impact.[2]

Notable examples in this case could be found in the caste system within the Indian society and slavery in the western societies. It is in relation to such contexts that V. R. Krishna Iyer wrote: "... when millions are seized by communal convulsions and countless lives are lost in religious carnage the law cannot wish away macabre bitterness. Secular law had to face this sensitive challenge of degenerate religion."[3] Law is of help, then, in safeguarding religion from slipping into excesses, as it may be verified in cases ranging from the rudimentary rules of primitive religions to the latest US Supreme Court verdicts in the cases of child sexual abuse among the clergy. When a religion loses track of its inspirational sources, such as its own sacred scriptures and the examples of the lives of exemplary members, it runs the risk of getting more attached to legal frameworks that can enforce discipline; unfortunately, however, without the necessary inner dynamic sources, which are considered to be the spiritual foundations that sustain members of a religion, law fails.

A religion is built on the faith affirmations of individuals and communities. The fundamental strength of any religious body is the faith and the ensuing practice of those who subscribe to the unique faith perspective of that religion. However, what we find in the case of the organized religions, in particular, is the fact that this foundation is not sufficiently attended to in the formulation of their religious legislations; instead, such a base is taken for granted in the enforcement of the enacted laws. That is, when it comes to the application of the legislations, they are coerced by articulating the implications of their faith declaration. The ineffectiveness noted in the area of religious legislations is ascribed to the fact that there is erosion of religious foundations, not only at the end of the whole process (i.e., at the level of practice by ordinary people), but also at the very source of such legislations, as, at least, some of such legislations have resulted from those who are at the zenith of the hierarchical structure of religious authority. If they had taken stock of the faith foundations of the faithful and the importance of genuine religiosity, the enacted

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[2]Herbert Spencer captures this very vividly in the following text: "Ecclesiastical institutions ... strengthen social bonds and so conserve the social aggregate, but they also offer extreme resistance to change." *The Principles of Sociology*, New York: Appleton, 1897, 770-771.

[3]V. R. Krishna Iyer, *Law and Religion*, New Delhi: Deep and Deep Publications, 1984, 20.

legislations would have organically emerged from the faith-life and the existential contexts of those faithful, instead of surreptitiously locating their source exclusively in the power corridors.

Experts dealing with the law within the framework of religions are generally well-versed in the laws; however, as they have their foundation in the scriptures, those who promulgate, deliberate, and interpret the laws must have not only a broad knowledge of the scriptures (mostly understood literally) but must have proper scientific grasp and the technical know-how so as to interpret the scriptures for the present generations based on the central values, spiritual insights, and true religious perspectives. If not, it is highly probable that these 'experts' would do more harm than good to those religions to which they declare allegiance, and for whose sake they apparently involve in religious legalism. In this context, training/educating new members who would engage in studying and interpreting the rule/law shall not be made exclusively juridical. While juridical aspects are important and need constant attention, those scholars need to be given ample training in scriptural foundations and holistic theological interpretation.

Religion crystallizes the global inheritance of human wisdom which shall be wisely accepted as the foundation as well as an ongoing catalyst in further enriching our legal systems around the globe, be it 'sacred' or 'profane'. It is generally admitted that incorporation of religious thinking and its inspirational sources into the development of law has constantly encouraged a progressive moral development within every legal system. Even the development and declaration of human rights by the UN have been traced to religious ideals, although religions had appallingly betrayed their noble ideals through their conspicuous but unbecoming silence, especially when human rights were crushed under might of abusive religions and arrogant state machineries. In their close proximity, religion and law, at least in the initial stages of the latter beginning to affirm itself as an independent discipline, have drawn inspiration and strength from each other. Of course, the mutual interdependence of religion and law have been instrumental in making them more inclusive, though at times things have gone berserk through the exploitation and exclusive use of each other.

Strictly speaking, law has its source in reason's quest for order and maintenance of justice in the ongoing development of our social life. Hence, there is a gradual process of social evolution involved in the

development of any legal system.[4] It is endowed with the ability to inspirationally animate (religious law) and politically coerce (civil/criminal law) people into an orderly life.[5] The enforcement of law, generally, involves a heteronomous move where the autonomy of the ordinary is protected against the selfish onslaught of the more powerful ones.

> ... [O]n the one hand, law is perceived by the citizen and mankind in general as an external reality, like a human expression of a heteronomous willpower, which limits the freedom and autonomy of the person. The law is seen as the concrete manifestation of the compulsory force of an organised power system or downrightly as the expression of the free will of the strongest... On the other hand, the same law reveals itself to mankind as the indispensable instrument that guarantees, precisely through the imposition of determined limits on individual liberty, order and peace for common civil life. In this latter viewpoint the law manifests itself to mankind as a social factor of prime importance that permits the individual and the collective plan their civil future with confidence. The law is therefore perceived as a balancing element and as the human expression of a superior justice that transcends individual interests.[6]

These human dynamics really give rise to a resistance among those who have to follow legal injunctions. Such a resistance is especially encountered by those who are said to be responsible to oversee the successful application of religious legislations.[7] Although inspirational

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[4]For example, V. R. Krishna Iyer puts it as follows: "a country's constitution is not a sudden revelation inscribed in the paramount parchment. It is an evolutionary manifestation of cultural values, historical experience and contemporary social realities." *Law and Religion*, 20.

[5]Forcing others to subscribe to a particular religion's worldview through legislation is irreligious as well as inhuman, even if that would involve some of the cherished beliefs of the latter. Further, the same principle is applicable to secularists as well who would force people who subscribe to religious point of view in accepting the formers' standpoint.

[6]Libero Gerosa, *Canon Law*, London: Continuum, 1996, 5.

[7]Gerosa writes, in his *Canon Law* (6), about the negative response to the positive law enforced in a religious setting: "In the Church too the experience of ecclesiastical law reveals itself above all as negative: the confession of faith in Christ, mankind's Redeemer, which forms a strong spur to personal liberty, is limited in its concrete manifestation by canonical norms; so too divine law, which finds in prophesy and charism two particular expressions, can historically affirm all its

wisdom is accepted as the foundation of religious motivation, very seldom it is directly perceived as the foundation of legislations, much less when it comes to the punitive enforcement of those legislations. This points to a crisis pervading the corridors of legal enforcement machinery that lacks solid moral foundations, especially as the common people realize an erosion of values in the profession and practice of law: in fact, it starts from the stages of legislation and promulgation and pervades all through interpretation and application, thus leading to its ignominy and ultimate impotency.

There were attempts made by various revolutionary movements within religions to highlight the divide between the spiritual and the legal, apparently with the intent to redeem the former by claiming that the latter was completely secular. This view, however appealing to the radicals, does not seem to be doing justice to the human aspect of the religious reality. For a sample, I quote the position of a German Protestant theologian, Rudolph Sohm, whose views were permeated by a denial of all that is human within the religious reality: "Canon Law has shown itself above all as an attack on the spiritual essence of the Church... The nature of the Church is spiritual, the nature of the law is worldly. The nature of the Canon Law stands in contradiction to the nature of the Church."[8] In spite of the unbecoming practices and horrors unleashed against human beings and their dignity, some times, by religiously sanctioned laws, I prefer to differ with the view expressed above which claims that law stands in contradiction to religion. Insofar as religion is a human attempt to capture and carry the divine encountered in human history and horizons of human life, it cannot but be human. Insofar as it is human in its dynamics and a plurality of members is involved (thus, taking religion to a public domain), it cannot escape the humane need of legal frameworks. What we should

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binding force only through the interpretation and positivisation of human law. On the other hand, less immediate is the positive experience of Canon Law as a totality of norms that guarantee the permanence of the identity of the Church and the unity of the symbol of the faith, inseparable from the action of the Holy Spirit, through the protection of the substantial truth of the Sacrament and the Word of God."

[8]Rudolph Sohm, *Kirchenrecht, I: Die geschichtlichen Grundlagen*, Leipzig 1892 (2. Auff. 1923, Neudruck: Darmstadt 1970), 700, cited in Libero Gerosa, *Canon Law*, London: Continuum, 1996, 7. Here it is not my intention to imply that only Protestant theologians subscribe to this view; in fact, there are both Catholic theologians and the leaders of other religions who hold that the said separation between religion and law must be maintained.

insist upon is the fundamental role and positive influence that genuine religious experiences have to play in the formulation and promulgation of legal enactments in view of the enhancement of life aimed at by religions.

Jurisprudence triumphs in a society only when an enlightened social conscience is at its foundation. Emergence of a consciousness that is sensitive to the transcendental dimension of life as well as the age old universal values enshrined in human conscience needs to be facilitated through conscious efforts. There is a need to elevate the consciousness of the masses to higher levels, where integration would be a key factor. Such an enhancement of the consciousness may be better facilitated by religions, as their primary motive as well as the fundamental process is designed to initiate and maintain higher levels of consciousness among their members, a level of consciousness that is otherwise lost sight of in the vicissitudes of human life.

An anomaly that we find within the context of religious legislation is the lack of proper equity accorded to some sections, forming, in most religions, a major part of the faithful. Particular reference must, in this regard, be made to the women folk who form at least half of the faithful in most of the religions. Take any place of worship, except probably the Mosque, the congregation is mostly constituted by female devotees. When it comes to attending religious ceremonies or fervent religious practices, women seem to be outnumbering men. Although this is more or less a universal phenomenon, when it comes to religious legislation, both the role and the influence of women are said to be almost completely absent. Unfortunately, in the case of both organized and unorganized religions, compliance of women with regard to religious legislations is taken for granted and, as a result, they are seldom consulted and not even given proper platforms to express their concerns as well as viewpoints. Moreover, the chauvinistic attitudes prevailing among those who wield authority in such religions continue to ignore this major part of the faithful. Whatever is the justification that they come up with, if the strength of a religion ensues from the practice of faith, naturally, those who form part of the faithful should have a role in legislating and enacting laws, even if democratic procedures are not integrated into their legislative ethos. If not, it would only show the paucity of such religious frameworks in addressing the existential aspects of the faith practice in the life of all concerned. If justice needs to be done in religious legislations, these religions have no alternative than admitting all concerned, especially women – the hitherto neglected partners in religious experience and religious management – in

the processes that are adopted in enacting any further legislation within their 'sacred' precincts. In fact, the declining enthusiasm to religious legislations and the coldness with which religious legislations are thrown to winds in the contemporary society could be attributed, at least partly, to the lack of equity in enacting and promulgating legislations; if the faithful are given a chance to be heard in the enactment of the laws, there would be better chances that these legislations will have their acceptance and effectiveness in the lives of the same faithful.

Reference to the lack of equity in religious legislations takes us to a general pattern that is prevalent in the dynamics of secular as well as religious legislations. A common denominator in unjust legislations present in any society – be it religious or secular – is the fact that there is no representation given to the people concerned who are expected to abide by the legislations. Moreover, those who are instrumental in enacting such legislations do have their interests at stake if certain legislations are not promulgated. As private interests of those who wield authority assume the centre stage in legislative processes, many a time they would be led to the establishment of unjust laws, not to serve the genuine and valid interests of all concerned but only of those who are at the helm of affairs. In certain cases, however, nominal representations are provided to the people concerned which is necessary in all democratic setups, although, in reality, the said people may not have any say in the actual choosing of their representatives; it would be mostly dictated by those whose interests are at stake. Such legislative mechanisms, very much functional in our contemporary national as well as international political and religious arena, seem to be ultimately incapacitating the legislative machinery in serving the good of the people concerned. Thus, it is quite alarming to note that when it comes to exploitation through legislation, both religious law and secular law would fall back upon the same dynamics. It would become all the more troublesome, if these two begin to function hand-in-glove to conspire against the people – be they believers of religions or the electorate of a polity. Although codifiers of the law aspire and assert it to bring a liberative experience to its subscribers, very seldom does it become really liberating. For, collaboration of religion and politics for exploitative purposes is a deadly combination, as it is repeatedly attested to in history.[9]

[9]In history, we do come across with instances in which religion and law have assumed the roles of tyrants; being tyrannical in themselves when they lost sight of their purposes, their combination had resulted in irredeemable catastrophes in human

Equity destroyed or denied through the collaborative designs of religion and politics cannot be redeemed as long as they retain reins of power in the society. Longer such systems prevail through their conspiracy, people remain in fetters, and longer it is sustained through more and more unjust means, cry for liberation from such exploitative legislations would become louder and louder until they are granted freedom and equity through proper channels that could be at the same time humane and religious.

We live in a world where religion and law intersect quite often, especially in the context of the modern state, which has assumed an all-pervasive role in human affairs. Gone are the days when a mere religious sanction would settle all issues. As people claiming non-allegiance to any form of organised religious lifestyle become increasingly assertive, we are faced with an existential situation of competition between organised religionists and outsiders. For example, if people conducting their religious worship in one place complain about another social or sports event being conducted, how would we look for a settlement. In fact, both being affairs of the society, we need to look for a resolution, lest the common good would be adversely affected. If such a complex situation is analysed and resolved merely by referring to the religious tenets, it can naturally evoke resistance from many corners. For, the invoked religious tenets need not have universal approbation. This is not to suggest that the religious tenets are of no value; moreover, in the context of Indian secular state, especially, where a multitude of religious affiliations forms the backbone of the society, having no regard for religion or having a preference for a particular religion in settling issues related to public welfare would only fetch doom. However, as public welfare is at stake, I would suggest, the law of the state has to play its pivotal role in settling such issues without infringing the freedom of individuals, balancing it with reasonable demands from other groups who also form part of the state.

When religion is put before the bar of law, naturally, religion would be understood only from the legal perspectives, commitments, and goals. As objectivity plays a crucial role in the legal worldview, a legal version of

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societies. Religion and law, if absolutize themselves by taking an upper hand, even to the extend of hating humanity, in general, and human beings, in particular, instead of enabling the latter to actualize their human potentials and to surge ahead to those unknown limits of life and existence by infusing it with immanent meaning and transcendental motivation, would both be as bad as blasphemy, treason, or lawlessness.

religion would naturally be reduced to its symbolic expressions, structured dimensions, external practices, and normative commitments, which, though are important aspects of religion, by themselves would not make the reality of religion. In the same way, it is dangerous to reduce the whole of religious reality and religious consciousness to a few aspects of a culture, almost amounting to an assertion of the identity of religion and culture. Moreover, there is an increasing tendency among jurists and legislators, to claim a definitive distance from religion, especially from the period of Enlightenment onwards, which seems to be climaxing in the secularist globalized philosophies that have gained currency in the affairs of the day. However, if an impoverished form of religion is accepted as the point of reference by the bar of law, it would result in an impoverishment of law itself, as 'being religious' participates in a predominant worldview which continues to be offering enhancing perspectives to a great variety of peoples living across the globe.

Although constantly found on the warpath, religion and law seem to be allies working hand-in-hand when it comes to their own benefits. No organized religion functions without subscribing to its own legislations, even if they are said to be founded on revealed wisdom (being inspirational in content and character); in their attempts to enforce religious legislations, religious authorities do not hesitate to take recourse to secular mode of external and coercive penal mechanisms. In the same manner, secular legislative bodies, which assert their independence from non-secular authorities, including religious ones, do know well that religious motivation is a powerful tool in generating a positive allegiance towards the legislated laws by providing an internalizing mechanism supposedly issued from a constantly evolving religious consciousness. As long as these two rivals remain pretentiously on their own ideal path, they seem to be on the fighting mode, probably in their attempt to prove each other's supremacy. However, when it comes to their own territories, while they continue to insist on their independence, both attempt to capitalize from the other's treasuries, though quite reluctant to openly admit the fact.

Another interesting factor in the mutual interaction between law and religion is their ability to be a corrective to each other. While religious excesses have many a time been curbed by secular law,[10] enabling

[10]According to Krishna Iyer, law is used to over-power savage religious injustices: "*Sati* was abolished by law, child marriages were abolished by law. The Special Marriage Act provided for inter-religious marriages. Even Muslim divorce at

religious authorities to function in a human mode without losing their transcendental dimension, we do not lack instances where religious offices have been put to use to curb the ill effects of some of the secular legislators/legislations that had haunted various peoples and civilizations. Apart from providing "a transcendent perspective by revealing a dimension of human life over and above the social and political order," "religions set a limit to the power of the collectivity and the state, since in a religious context the state cannot pretend to be the unitary source of all authority."[11] Thus, religions have to don a prophetic role in the vicissitudes of life vis-à-vis the legislations promulgated by legal regimes, especially when they are made to perpetuate unjust practices through legal sanctions. It is in such contexts that religion has to function as the conscience keeper of the society, without being and becoming the co-conspirator of unjust political regimes, and speak out relentlessly against them for the sake of establishing and maintaining a social order based on an uncompromising value system.

Religion thus approached is gravely in need of thorough introspection which would enable itself to be the relevant voice to our times and peoples. Every religion is in need of transcending its self-imposed, historically conditioned faith formulations – including certain dogmatic formulations and related practices – which tend to belittle itself and limit the liberative dimensions of faith experience with a view to broadening the horizons and deepening the commitments to the causes of humanity as well as nature. Indeed, its lost contacts with the inner recesses have to be re-established, and the spiritual fountains are to be freshly unearthed. No amount of political clout will redeem the inner vitality of religion; it needs to be recharged by its own spiritual power centres that would infuse its inner and outer mechanisms as well as any other system – including law – that could be made better through close collaboration.

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the instance of women, was allowed by law in certain limited circumstances. Maintenance for destitutes and children, beyond what the Muslim Law provides, was allowed by Law (Section 488, Criminal Procedure Code). Now, by Section 125 of the Cr.P.C. 1973, even divorcees, regardless of religion, are entitled to maintenance from their husbands. Parliament has made law whereby Hindu women have better terms of inheritance, better right to divorce and maintenance and, generally, better status." *Law and Religion*, 73-74.

[11]Hilary Charlesworth, "The Challenges of Human Rights Law for Religious Traditions," RIL, 405.

Modern attempts that happened especially after the Enlightenment and World War II, leading to aggressive measures of globalisation, have facilitated secularisation and the resulting affirmations without the explicit reference to religious categories. In some cases, there have been attempts to use more inclusive languages and broader perspectives, which would be acceptable to audiences beyond the horizons of a particular religion; at the same time, in certain other cases, these secularisation movements were resulting from conscious attempts on the part of some to give up and condemn religion and religious categories. Though some valid attempts could be found in the latter, there is no rational justification in sidetracking the whole of religion and religious categories for the secular, as it reflects only an option for a different point of view, which does not necessarily enjoy immunity from further criticism and rejection. In fact, despite the affirmative steps of secular minded individuals who have assumed offices in political or civil arenas, and a decline in the numbers of meticulously practising individuals within the religious sphere, a religious perspective shared by many across the cultures and political regimes cannot be simply wished away. If we are ready to face the fact, it must be admitted that even the contemporary world of 21st century continues to be religious despite the so-called onslaught of secularism and many other anti-religious theories. Given this, some introspection is necessary on the part of both religions and legal regimes, so much so that they would succeed in facilitating more inclusive approaches.[12]

Moreover, the secularists' attempt to drop the religious vocabulary altogether (e.g., God, the Creator, the Divine, etc.) simply does not mean that all that was (and is) cherished as religious is completely given up. Despite such an apparent absence, a closer perusal of the new language will obviously bring to focus the fact that most of the cherished values propounded by religious traditions all through history are found to be present, though presented in a secular garb. Thanks to some such secularists that these attempts have been more effective in powerfully

[12]There are many legal frameworks recognizing religions and religious consciousness; however, owing to the historical conditionings, such a recognition tends to be very narrow and, therefore, in the context of 21st century it is essential that the constitutional laws adopt a rather broader framework of religion and religious consciousness so as to be more inclusive; it would pave the way for better mutual acceptance and to pool together the strength of human community in diverse fashions.

putting across such great ideals, which otherwise the religions have been hitherto incapable of doing effectively.[13] In this context, it is up to the religionists to continue to strive to give visibility to the ideals that they have been religiously adhering to among their in group members, thus, redeeming and maintaining the importance of religious ideals, terminologies, and concepts.

Despite the presence of many extreme secularists who tend to wish away religion altogether, claiming that it has lost its relevance and vitality in the modern era (mostly because there is a decline in an overall response to the life patterns proposed and maintained by organised religions), a close scrutiny will quickly convince us that humanity as a whole still aspires for religious foundations, especially since many modern alternatives seem to be sheer short lived meteors. Humanity is still on the lookout for firm and transcendental foundations, which nothing but religion alone can offer: "People will not give their allegiance to a political and economic system, and even less to a philosophy, unless it represents for them a higher, sacred truth. People will desert institutions that do not seem to them to correspond to some transcendent reality in which they believe – believe *in* with their whole beings, and not just believe *about*, with their minds."[14]

Having affirmed the necessity of religion and religious ideal and the all-pervading role of law in human life, we find them merging on the platform of morality. Religion penetrates into the day-to-day living of its votaries not only by routine rituals or religious practices but also by inspiring them to live a life in accordance with the moral principles. In fact, a religion's success can be measured in its ability to inspire and motivate its members in living a virtuous life in accordance with the principles enshrined and inculcated in its sacred scriptures and other subsequent teachings. On the other hand, in the case of law, we come across with morality as its foundation. Although validation of a legal system is mostly made through political processes, the ultimate source that lends credibility to any law is morality, so much so that the absence of the latter would make the former hollow and sterile, although it would continue to exercise its power within the frameworks epitomised by itself. Thus, while religion infuses morality with inner spirit (meaning) and

[13]For example, the UN Charter of Human Rights.

[14]Harold J. Berman, *The Interaction of Law and Religion*, Nashville, TN: Abingdon Press, 1974, 73.

motivation, the same morality enables legislations to be meaningfully founded on universal principles that have emerged from the collective practical wisdom of humanity in different places and ages. It is true that our century, apparently claiming to be established on secular foundations and profane values, seems to be ignoring these bases and connections; an integral personal as well as social life, however, could be facilitated when human societies succeed in holding together religion and law through the dynamics of morality.

We live within a world-wide-web where enactment of any law requires not only a consideration of the given context and the interests of the immediately affected individuals. In fact, the 'butterfly-effect' that has gained currency in the scientific world seems to be operative even in the arena of legislation. Legislations, therefore, can be made, interpreted, and applied only after having appraised of its wider ramifications, ranging from scientific considerations, religious aspirations, issues related to transport and communication, and commonsense concerns. That is, even simple legislations done in a concrete setting (local or global) offer legal as well as religious consciousness immense opportunities for mutual interaction, critical and creative support, and enhancement.

We witness an increasing tendency to deny the prevalence of religious influence, especially when it comes to governance of the state and its people. There seem to be conspicuous attempts made by the interested parties, who qualify themselves to be secularists, to shun religion from the public sphere and relegate it exclusively to the private sphere.

> Conventional accounts of law, human rights, and democracy afford little space to religious ideas and institutions. Laws are generally viewed as rules and statutes promulgated by the sovereign, not as temporal elaborations of a divine or natural law. Human rights norms are generally viewed as secular claims to a good life, not as corollaries to divine duties for right living. Political rulers are generally viewed as representatives of public opinion and vindicators of human rights, not as vice-regents of God or champions of divine justice. To be sure, most writers today would agree that religious believers must be guaranteed liberty of conscience and free exercise of religion and that religious institutions must be guaranteed collective worship and corporate organisation. But religion, according to conventional accounts, is fundamentally a private matter

> with little constructive role to play in the drama of law, human rights, and democracy.[15]

It is an attempt to deny any creative role to religion and religiosity in the social lives of people by restricting it to the private space. Those who gear up such a theory seem to forget the organic connection between the religious ethos that has been instrumental – sometimes even through certain negative mechanisms – in birthing a humane worldview that is fundamentally religious in substance, although, in some cases, the traditional anti-human garb and authoritarian stand of those who were at the reins had betrayed the real religious core, thus, wrongly winning for it notoriety among the modern intellectuals. The failure of a few at the helm of affairs, I think, cannot be taken to be the failure of a movement or a system; their short-sightedness and exploitative tendencies for personal fame and name, probably are at the back of it.

The attempts made by materialists and secularists who shun everything spiritual as an artificial addition to human mode of existence must be curbed and, instead, conscious efforts need to be initiated to build up a social fabric which is integrally human and religious at the same time. The new political culture that seems to be doctored by the secularists tries to sabotage the proper balance between being human and being religious, as they consider secular foundations to be self-sufficient to build up a society; however, the failure of secular democracy in the Indian situation, for example, attests to the fact that we should not ignore the transcendental aspect of life in setting the social foundation for political governance, especially within a democracy where the electorate is expected to be enlightened and to maintain a balance between various dimensions of human life. Instead of religiosity being exploited for cheap electoral gains, religious leaders as well as ordinary religious believers must be united in lending support to raise a social consciousness that would be akin to the perpetuation and practice of validly enacted laws by infusing them with value backup and transcendental ideals which can pull it through the thick and thin of individual and social life. Without letting itself be reduced to a mere tool in the hands of vicious politicians, religion should assume its fundamental role of animating the citizenry to realize the value of every legislation and thus enable them to meaningfully design a life around the political and legal structures that are essential for an enhanced human

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[15]John Witte, Jr., "Law, Religion, and Human Rights," *Columbia Human Rights Law Review* 1, 1 (1996), 28.

existence. In fact, mere legislations and the strict practice of laws are insufficient to develop and sustain a law-abiding society. Creating a healthy ambience for a law-abiding life requires a social consciousness that draws from human creative intelligence and its transcendental resources, which together would enable the development of enlightened norms for a dynamic and meaningful social life.

Intense search for meaning is characteristic of the postmodern phase in the development of human social living. Although the religious dimensions of human experience would influence the holistic development of the law, a mere religious justification is generally considered to be insufficient in infusing the institution and practice of law with meaning and relevance. It is true that lawfulness is essential for human society; however, the formulations of law that are accessible to human societies, as all of them are said to be in one way or another originated through human agency, must be open to change and transformation as it would be dictated by the need of the times. As it is stated earlier, due to the human element present in religious legislations, even they are mutable and should be changed as and when the need arises. In case, the possibility of change is ruled out in terms of timelessness of legal formulations, they would gradually become irrelevant in designing a meaningful life – both for the individuals and groups. In fact, an absolute denial of the need of change would only spoil the spirit and goal of law, so much so that lack of respect or a total rejection of the law would prevail, ultimately causing the distortion and un-attainability of the common good of the society.[16] Postmodern challenges call for creative responses emerging from both jurisprudence and religious authorities to reconsider every legislation and its supportive metaphysical position and religious motivation, in such a way that acceptance and practice of various laws would enable its adherents to ennoble their lives in better ways that they are otherwise accessible to them in the vicissitudes of life. As various mechanisms

[16]For example, the prescriptions to protect the rights of women, as they are enshrined in the "Convention of the Elimination of All Forms of Discrimination against Women" (UN, 1979: see http://www.un.org/womenwatch/daw/cedaw), have been rejected by some religious traditions (particularly, Islamic nations cited that the Convention goes against provisions of the *Shari`a* in resolving conflicts among individuals; see text of footnote 8 at http://www.socialwatch.org/en/informes Tematicos/86.html#_ftn8) on the pretext of these prescriptions going against the scriptural injunctions and traditional practices.

adopted in the social living are put in place to facilitate nurturing and elevating humanity to its highest levels of existence, religion and law should facilitate their ultimate goal in terms of communion among individuals and communities. Then, truly an exalted communitarian consciousness would finally be attained.

Religion and law seem to be interacting with each other; at times, it is smooth and mutually enhancing, while at other times it had been tumultuous. On the positive side, if religions could keep themselves open to the creative interventions initiated by certain legislations and, on the other, the legislative bodies to the positive insights and promptings of religious scriptures and authorities, without infringing upon the rights of each other, a lot of good may be accomplished. For example, in certain instances, a specific law enacted may beckon a particular religious tradition to higher standards than its prevailing beliefs, practices, and even the inner dispositions that individual believers allow, as what has happened in the cases of abolishing slavery and caste system, recognition of women's rights, etc. Indeed, sometimes such instances would even call for serious and genuine introspection that can create disturbing tremors in the corridors of power, whether it is religious or political. Law can challenge particular religious communities to go beyond the self-assumed but limiting boundaries of personal as well as social living, usually ascribed to the belief systems put in place by religious inspirations and ensuing traditional practices.

A religious response to legislations or a legal response to religious consciousness shall not, by itself, engender pessimism: if it happens it would amount to sheer prejudice. Religion and law, as two arms of human consciousness, by being sensitive and responsive to each other, shall mutually contribute towards the preservation, inclusion, and transformation of each other in an ongoing process of enhancing and perfecting human living.

It is with such a positive as well as a critical note that *Journal of Dharma* has initiated a discussion on "Religion and Law: Forces of Liberation." The contributors to this volume have approached the issue with scholarship and imagination and, in general, have come up with a clarion call for both religion and law to consciously and conscientiously exercise their roles in order to attain liberty by liberating humanity and the entire creation from the maladies of disorder and lawlessness, sometimes epitomized by these guardians of humanity itself. "Law and Religion: A Feminist Biblical-Theological Critique" by Pauline Chakkalackal

scrutinizes patriarchal nature of the biblical texts, on the one hand, and their liberative potential, on the other. She poses an existential challenge to various practices within the Church-life and calls for a radical *metanoia*, which she believes would bring the Church back to the spirit of Jesus, the source and agent of true liberation. Sebastian Mullooparampil, in his article entitled "Jesus' Liberative Approach to Jewish Law and Religion," makes an earnest attempt to unveil the liberative approach that Jesus had adopted in imbibing the true spirit of Old Testament worldview and, at the same time, transcending the corrupting elements within that framework, not merely by offering a reinterpretation of the law, but by offering his own life and thus inaugurating a new paradigm of the law of love: transforming and fulfilling the OT understanding of religion and law through an ongoing *kenosis* of unconditional self-giving. Continuing the liberative quest, Cherian Thunduparampil approaches the issue from the perspective of the canon law in his article, "Canon Law: Liberative or Restrictive?" Based upon a detailed analysis of marriage annulment cases and the issue of freedom of expression, the author conclusively proves that the laws, including the penal laws, established in the Church through the Canon Law are essentially intended to be liberative. In a brief reflective article, "Justice Wedded to Mercy: Law and Religion Paving the Way to Freedom," Benny Joseph scans through the historical development of law in human thought and affirms that the rule of law has the primary end of realizing justice in the society. In the final entry, "*Nyaya Panchayat*: Towards Speedy and Easy Justice," Davis Panadan takes us through the rich cultural heritage of ancient India, which is found to have made lasting contributions in the field of administration of society. Against the background of the popular statement, 'justice delayed is, in fact, justice denied', his study of the *Nyaya Panchayat* system indicates that it could be taken as a viable and valid alternative to avail speedy and easy resolution of legal issues in the present context of India.

Life is an ongoing process, both at the personal and the societal levels. As this process unfolds in human life, it is inevitable that new circumstances would emerge which would call for renewed approaches from religious as well as legal frameworks. In fact, radically new circumstances call for radically new approaches and, if the frameworks available in the traditional paradigms are insufficient to address them, we need to look forward to consciously formulating the needed new paradigms, without losing sight of both the successes and failures that

humanity has realized over the centuries, whether it came from particular religious doctrines or politicized legal regimes.

As omnipresent agents in human social living, the reach of religion and law is immense. Both of them could shed light from their inner core and can dispel the darkness that surrounds the human community that is losing its grounds to abysmal proportions. Their ability to overcome chaotic ripples in human consciousness and turbulences in social existence through establishing order and cohesion resounds their natural but symbiotic relationship that is ideally conceived in their mutually enhancing functions. This points to an abundance of optimism that these two human devices would evolve better mutual understanding and ongoing creative mutual critique so much so that they would continue to fulfil their role of generating and maintaining order in enhancing the human state of existence and, thus, reinstating the natural rhythm of the whole reality.

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LAW AND RELIGION
A Feminist Biblical-Theological Critique

Pauline Chakkalakal♦

1. Introduction

Jesus of Nazareth was teaching in a synagogue on a Sabbath day. There came a crippled woman, who was bent over for 18 years. When Jesus saw her, he called out to her, placed his hands on her and healed her saying, "Woman, you are set free from your ailment." Instantly she stood up straight and began praising God (Lk. 13:10-13). The law-abiding synagogue official was angry that Jesus had healed her on the Sabbath. He expressed his contention with all his religious fervour: "There are six days on which work ought to be done; come on those days and be cured, and not on the Sabbath day" (v. 14). Struck by his fanatic belief, the Master responded: "You hypocrites! Does not each of you on the Sabbath untie his ox or his donkey from the manger, and lead it away to give it water? And ought not his woman, a daughter of Abraham whom Satan bound for eighteen long years, be set free from this bondage on the Sabbath day?" (vv. 15-16).

This is a classical example of Jesus' violent attack on the rigid interpretation of the Law. It is also the key to comprehending the purpose of the Law: "The Sabbath was made for humankind, not humankind for the Sabbath" (Mk. 2:23-27). Any law that cripples human growth in all its dimensions or forbids doing good to others is null and void (Mk. 3:4). For Jesus, human persons are more important than mere observance of the Sabbath laws. In the words of Kappen, "There is for Jesus no dichotomy between humanism and religion."[1]

Another episode that illustrates Jesus' critique of religious laws is the healing of the woman with a hemorrhage (Mk. 5:25-34). This woman stepped beyond the prescribed female boundaries to claim her right to

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[1]Sebastian Kappen, *Jesus and Freedom*, Maryknoll, NY: Orbis Books, 1977, 124.

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receive God's salvation offered in Jesus. According to Leviticus (Chs. 12, 13), women with the flow of blood were considered unclean and were not allowed to leave their homes; they could not go to any public gathering. This woman's predicament was not just an incurable illness but posed also permanent uncleanness. She was not only unclean herself, but polluted everyone and everything with which she came in contact and, hence, was barred from the congregation of the 'holy people'. "No wonder she risked financial ruin and economic destitution to become healthy and, therefore, cultically clean again."[2]

The attitude of Jesus in this pericope is remarkable. In spite of being polluted by the touch of an unclean woman (Lev. 15:27), Jesus makes no act of purification. Neither is there any urgency in the situation (v. 35). It is also amazing to note that Jesus does not send this woman away to purify herself as he does with the leper after having healed him (Mk. 1:44). Instead, before the whole crowd he calls her *daughter.* He does not let her go unnoticed. He wishes to highlight the faith which prompted her to seek healing and wholeness.

The affectionate expression, "daughter," in both instances (Lk. 13:16; Mk. 5:34), denotes Jesus' act of affirming these unnamed daughters in their personhood and womanhood.

Keeping these two excellent examples that illustrate Jesus' critique of law and religion as a backdrop, we shall unearth the liberative potential of religion from biblical tradition with a view to enhancing woman's empowerment and leadership, particularly in the Church.

Divided into two parts, this essay intends to scrutinize the patriarchal nature of biblical texts, on the one hand, and their liberative potential, on the other. Towards this purpose, we shall be highlighting some pertinent passages from the Old and New Testaments. The second part will focus on women in the post-Vatican II Church.

2. Religious Laws in Biblical Tradition: Liberating or Enslaving Women?

The Bible, written from the socio-cultural perspective of male authors, as well as interpretations, has legitimized women's subordination in Christian tradition. Astonishingly, down the ages, women's "oppression

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[2]Elisabeth S. Fiorenza, *In Memory of Her: A Feminist Theological Reconstruction of Christian Origins*, New York: SCM Press Ltd., 1983, 124.

was rationalised as compliance with the divine will."[3] Biblical texts are used to claim divine rights for all forms of exploitation of women. Elizabeth Cady Stanton cryptically sums up the use of the Bible against women's demand for political and ecclesial equality: "From the inauguration of the movement for women's emancipation, the Bible has been used to hold her in the 'divinely ordained sphere' prescribed in the Old and New Testaments. Creeds, codes, Scriptures and statutes are all based on this idea."[4] The biblical notion of equality and partnership (Gen. 1:27-28; 2:18-25) is distorted by male-oriented and culture-bound interpretation of biblical texts. Some examples of discriminatory passages are cited below to make our discussion more concrete.

2.1. Woman Treated as Man's Property

The Ten Commandments include woman among the objects owned by man: "You shall not covet your neighbour's house, you shall not covet your neighbour's wife, or his manservant, or his maid servant, or his ox, or his ass, or anything that is your neighbour's" (Ex. 20:17; see also Deut. 5:17-21). The man could treat her in the same way a master treated his slave or a king his subject.

2.2. Woman Deprived of Inheritance Right

A daughter could have access to her father's property only if there were no male heirs: "If a man dies and has no son, then you shall cause his inheritance to pass to his daughter" (Num. 27:8). In this context, the courage of the five daughters of Zelophehad is admirable (Num. 27:1-11). They stood before Moses and the entire congregation (v. 2), challenging the Mosaic law of inheritance (vv. 3-4). A parallel can be drawn between the Mosaic law of inheritance and the law of Manu.[5] Both have strong patriarchal roots that make women dependent on the dominant males in their families.

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[3]J. C. Pallares, *A Poor Man Called Jesus: Reflections on the Gospel of Mark*, Indore: Satprakashan Sanchar Kendra, 1986, 51.

[4]Elizabeth Cady Stanton, ed., *The Original Feminist Attack on the Bible: The Women's Bible*, New York: Arno Press, 1974, 7.

[5]See the scholarly article of Ravi Tiwari, "Women in Manu," in Prasanna Kumari, ed., *Feminist Theology: Perspectives and Praxis*, Chennai: Gurukul, 1999, 118-119.

K. G. Gabriel has highlighted this aspect in his case study on Property Rights.[6] He observes that in the graded hierarchical structure of the family, the female members are below the males: father on top of the hierarchical ladder, followed by his son. In his critique of the Syrian Christian practices with regard to landed property, Gabriel maintains that these practices, to a great extent, have their roots in the Old Testament laws. His sharp criticism is worth contemplating:

> Their traditions show that their social and cultural practices dominate over the gospel message. Thus their practices are culturally determined rather than being biblically rooted or theologically and ethically justified. We see that, after the victory of Mary Roy's case, the Supreme Court's judgement was furiously debated and opposed. It is very sad to see that even when the judiciary stood for the fundamental rights of women, the Church establishment stood for the oppressive and patriarchal values...[7]

2.3. Laws of Ritual Purity

Laws concerning purification of women stigmatized them as unclean during their periods of menstruation (Lev. 15:19f.) and child birth (Lev. 12:1-5). A rigid purification was also prescribed for everything touched by the woman and everyone who touched her (see Lev. 15:19-31, 20-18). To add insult to injury, the sin offering was required of her both after the menstrual period and child birth (Lev. 15:30). This concept, that menstruation and childbirth cause 'uncleanness', persisted into the patristic and later Church to the detriment of women's ministry and leadership roles.[8] In fact, all ancient cultures share similar ideas on purity and pollution. As Gnana Robinson points out, "The principle of purity and impurity pervades the Indian culture and it partly explains the hierarchy of castes in India..."[9] In brief, the woman was culturally, socially and physically ostracized.

2.4. Women Denied of Education

A study by J. Jeremias[10] reveals that schools were only meant for boys. A woman was educated merely in household tasks that would enable her to serve man's needs. Describing the situation, Pallares says: "It was commonly held that women were incapable of observing the

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[6]K. J. Gabriel, "Property Rights: Women's Rights Too!" in Elizabeth Joy, ed., *Lived Realities: Faith Reflections on Gender Justice*, Bangalore: CISRS, 1999, 65-76.

commandments, in as much as they were considered to lack the capacity for schooling (Babylonian Talmud, Shabbat 33b)..."[11]

The injunction prohibiting women to study Torah creates the paradoxical result that "on the one hand, since the study of Torah is always meritorious, women are rewarded for its study (though to a lesser degree than men since they are not divinely commanded to do so) and, on the other, they are in practice discouraged from such study."[12] It represents an ideology that marriage and child rearing are women's appropriate sphere of activity. Once again, we notice a striking similarity between Jewish law and *Manu Smrti*.[13]

2.4. Women Discouraged from Public Activities

Activities of women were confined primarily to the home. As in Greece and early Rome, women were expected to remain within the house: "Your wife will be a fruitful vine within your house" (Ps. 128:3). They were to be faithful wives and sacrificing mothers even at the cost of their own personhood. Home-loving women were highly praised by the family and community (Gen. 24:14; Prov. 31:10-31; Job. 4:3-5). Female leadership, whether political or religious, was generally considered unnatural and undesirable. In such a situation, where kings, judges, prophets, scribes, elders, and members of the Sanhedrin were almost exclusively male, the leadership of exceptional women in Israel's history is remarkable (eg., Ex. 15:20-21; Judg. 4 & 5; Neh. 6:14; 2 Kings 22:15,18).

2.5. Unravelling Religion's Liberative Message

Religion and culture are inextricably woven together. Scriptures reflect the socio-cultural assumptions of the then society. As all theological

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[7]Gabriel, "Property Rights: Women's Rights Too!" 76.

[8]See for example the attitude of Church Fathers and Reformers in R. B. Edwards, *The Case for Women's Ministry*, London: SPCK, 1989.

[9]Gnana Robinson, "Purity and Pollution: A Theological Perspective," in Prasanna Kumari, ed., *Feminist Theology: Perspectives and Praxis*, 316-330.

[10]J. Jeremias, Jerusalem in the Time of Jesus, translated by F. H. & C. H. Cave, Philadelphia: Fortress Press, 1969, 374/384.

[11]Pallares, *A Poor Man Called Jesus*, 53.

[12]E. Wyschogrod, "Women in Judaism...," in Regina Coll, ed., *Women and Religion*, New York: Paulist Press, 1982, 84.

[13]For a brief discussion on this, see my book, Chakkalakal, *Discipleship: A Space for Women's Leadership?* Mumbai: Pauline Publications, 2004, 246-247.

interpretations and disciplinary norms (for example, Church laws), are based on a particular understanding of biblical texts, it is important to reread them from a liberative perspective. By way of illustration, we shall engage in a feminist reading of the Creation accounts of man and woman in the book of Genesis 1:26-27 and 2:7-8, 18-25.

2.5.1. Genesis 2:7-8, 18-25

We begin with Gen. 2:4b-8, 18-25, the Yahwist story of the creation of woman on the basis of contemporary scholarship according to which this represents an older strand than the creation account in chapter one.[14] The story focuses on the creation of the woman from man's rib (vv. 21-22). Upon seeing the woman, the man said: "This at last is bone of my bones and flesh of my flesh; she shall be called woman, because she was taken out of man" (Gen. 2:18-25).

The Hebrew words '*ish*' and '*isha*' have as equivalents in English 'male man' and 'female man'. So, the idea expressed by the exclamation, "Here then is the bone of my bones and the flesh of my flesh" is one of kinship or likeness. For, the woman to be "drawn from the side of the man" is only an image to indicate that the male man and the female man share in one nature, one species."[15]

Nevertheless, written from the perspective of a patriarchal culture, the editor of the creation story in Genesis 2 employs a language of his time; hence, depiction of woman as 'helper' for man is a notion that reflects a social characteristic of the time. As T. C. Vriezen remarks, "here (Gen 2) woman is said to have been created as the helpmate of the man, as his complement and partner. She was taken from the first man, so fundamentally his equal..."[16] Although the concept 'helpmate' has been commonly used to degrade women, the word 'helper' is often applied to God, and does not indicate subordination. Jane McNally observes:

> The Hebrew word *ezer*, translated as help or helper, appears 21 times in the Old Testament... When used of God the term *ezer* means 'strength' or 'power'... The proper description of Eve in Genesis

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[14]George H. Tavard, *Women in Christian Tradition*, London University of Notre Dame Press, 1975, 5. For an explanation of 'Yahwist', see Albert DePury, "Yahwist (J) Source," *The Anchor Bible Dictionary*, 6:1012-1020.

[15]John S. Pobee, "In His own Image... Male and Female He Created Them," in J. S. Pobee, ed., *Culture, Women and Theology*, Delhi: ISPCK, 1994, 138.

[16]T. C. Vriezen, *An Outline of Old Testament Anthology*, Oxford: Basil Blackwell, 1966, 206.

> 2:18 is 'a strength or power or partner equal and corresponding to him.' The 1989 New Revised Standard Version has 'a helper as his partner.'[17]

Thus, woman's equality with man in all that concerns human nature and dignity is implied in the text itself (see v. 23). The fact that God did not intend a superior-inferior relationship between man and woman is clearly spelt out in the creation account of Genesis 1.

2.5.2. Genesis 1:26-27

The Priestly (P)[18] account, as opposed to Yahwist-Elohist (JE) narrative, explicitly upholds woman's equality with man as we see in Genesis 1:26-27:

> Let us make man (human being) in our image, after our likeness; and let them have dominion... (v. 26). So God created man (human being) in God's own image, in the image of God, God created the human; male and female God created them (v. 27).

The notion of subordination does not surface here. In verse 26, the Hebrew term *a'dham* is used generically, for male and female, or for 'human race', and not as a proper name as in Genesis 5:3.[19] In the Hebrew text, five words are to be distinguished:

> *Adam*, *ish*, *ishah*, *zakhar*, and *neqehah*. *Adam* is a generic word for humankind or in British English 'man': 'Let us make man in our own image' (Gen 1:26), *Adam*, as the very next verse demonstrates, is male and female. It is only after the fall that Adam becomes a proper name and man gives the name Eve to the woman. But the fact of the generic use of Adam is evidence of ancient Israelite universalism.[20]

Zakhar, meaning 'female' (v. 27), denotes a person's sex, albeit in the one humanity. Male and female bear the same *imago dei*; both are creatures of body and soul (spirit), pointing to their total dependence on God the

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[17]Jane McNally, et al., *Abuse of Christian Women in India and Remedy in 12 Biblical Studies on Equality of Man and Woman*, Delhi: ISPCK, 1997, 38.

[18]On 'Priestly (P)', see Jacob Milgrom, "Priestly (P) Source," *The Anchor Bible Dictionary*, 1:454-461.

[19]John Skinner, *A Critical and Exegetical Commentary on Genesis*, n.p.: Charles Scribner's Sons, 1925, 32 ff.

[20]Pobee, "In His own Image... Male and Female He Created Them," 131. See also "Adam" in *Theological Dictionary of the Old Testament*, Grand Rapids: Eerdmans, 1974, 75-87.

Creator. Rhetorical critic Phyllis Trible points out the striking features in the creation of humankind (v. 27). She asserts that sexuality is designated as male and female only for human beings and this pertains not to procreation but to the image of God. Procreation is shared by humankind with the animal species (Gen. 1:22, 28), but sexuality is not. Therefore, she argues that the 'male and female' connotes a distinctive meaning, giving a clue in the Scripture for referring God. Male and female correspond structurally to the image of God and this formal parallelism indicates a semantic correspondence.[21] By using the expression *'ishshah me'ish*, the narrator seems to emphasize the identity of the *nature* and *equality* of man and woman.[22] Undoubtedly, this concept excludes all forms of domination-subordination attitudes.

In brief, an unbiased exegesis of the creation accounts unfolds the inherent dignity and equality of man and woman. The 'rib story' (Gen. 2), in spite of its patriarchal tone, does not advocate male superiority and female inferiority. On the contrary, the text alludes to a relationship of equality and mutuality between the first human couple, which is derived from the fact of their being created in the *imago dei*.[23] Likewise, man and woman have a common mission (Gen. 1:28). They are partners with God in God's creative work and stewards of creation. The commission to "be fruitful and multiply" and to "have dominion" (*radhah*) over creation[24] is given "to them" jointly. Therefore, neither man nor woman can monopolize responsibility and leadership. The Hebrew imperatives are second person plural, as male and female are addressed.[25]

In the New Testament too we find discriminatory passages which witness or contribute to women's marginalization and subjugation (e.g., 1 Cor. 11:2-16; 1 Cor. 14:26-40; 1 Tim. 2:8-15; Eph. 5:22-33; Col. 3:18; 1 Pet. 3:7). The misinterpretation of these texts, particularly 1 Cor. 11:2-16

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[21]Phyllis Trible, *God and the Rhetoric of Sexuality*, Philadelphia: SCM, 1978.

[22]N. P. Bratsiotis, "Ish" in *Theological Dictionary of the Old Testament*, 1:226-227.

[23]For a discussion on the community dimension of the *imago dei*, see Pobee, "In His own Image... Male and Female He Created Them," 134-136.

[24]The biblical understanding of 'subdue and dominate' rules out appropriation and destruction of creation. The power to dominate is to be exercised in a spirit of stewardship with kindness, justice and compassion like the Shepherd Kings of Israel (Ps. 72:12; 99:41; 116:12; Is. 11:6-9).

[25]Evelyn and Frank Stagg, *Woman in the World of Jesus*, Philadelphia: The Westminster Press, 1978, 20.

and 1 Cor. 14:26-40 (believed to be authentically Pauline), from the patristic era even to this day, has helped in the downgrading of women. It is, however, beyond the scope of this paper to engage in an exegetical analysis of these texts.[26]

All too often Pauline texts on women have been locked out of their contexts, and applied to totally different situations, or to issues, which lie beyond their concern. It is amazing to note how Pauline authority has been invoked in favour of female domestication in the Churches through the centuries. This has not only deteriorated women's position but also contributed to the development of patriarchal theology as exemplified in the teachings of the prominent Christian thinkers in the patristic era.[27]

Far from being an antifeminist or male chauvinist, Paul acknowledged and appreciated women's partnership in his ministry. This is obvious in his writings, especially Romans 16 that mentions Phoebe (vv. 1-2), Priscilla (v.3), Mary (v.6) and Junia (v. 7) – to name a few. In contrast to the Lukan conception of the early Church history in Acts, where leadership of Christian mission was in the hands of men, Pauline Letters depict women as apostles, missionaries, patrons, co-workers, prophets and leaders (e.g., Rom. 16:1-15; Phlm. 2; Phil. 4:2-3; 1 Cor. 11:5).

3. Women in Post-Vatican II Church

The Second Vatican Council (1962-1965), a landmark in the history of the Catholic Church, has given an impetus for a new awakening among the people of God with regard to the dignity and equality of women. We have no intention to delve into all the Council documents and subsequent official teachings by Popes and Bishops' Conferences.[28]

Though the general trend of the Vatican II teaching is, on the whole, progressive in affirming the dignity and vocation of women, in reality the Council's position seems to be riddled with ambiguities which need critiquing (for example, the view regarding the participation of women in the decision-making process of the Church that is presently controlled by the male hierarchy, the exclusion of women in formulating Canon law and

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[26]For a brief analysis, see Chakkalakal, *Discipleship*, 55-60.

[27]For a good grasp of their thoughts, see "Fathers and Doctors of the Church" in Chakkalakal, *Discipleship*, 60-72.

[28]For a comprehensive view, see Chakkalakal, *Discipleship*, Introduction.

in officially accepted theological and moral articulations, the androcentric and misogynist language and interpretations of biblical texts).

In her comprehensive work, *The Second Sex* (2 volumes), Simone de Beauvoir, a French existentialist philosopher, criticizes the Catholic ideology and practice that exclude women from leadership structures. She analyses the role of an all-male hierarchy in inculcating inferiority complex and psychological confusion in women. Her vigorous criticism may sometimes shock the sensibilities of the 'pious' Catholic. Yet, those seriously concerned about the problem cannot afford to ignore her critique:

> God's representative on earth: the Pope, the bishop, the priest who says Mass, he who preaches, he before whom one kneels in the secrecy of the confessional – all these are men... The Catholic religion among others exerts a most confused influence upon the young girl.[29]

Ordination is where this patriarchal mindset is most evident. Although ordination is not the central question for most women, *exclusion is*. Roman Catholic Canon Law is unequivocal on the subject of the ordination of women to the priesthood. The 1917 Code, canon 968:1 and the 1983 Code, canon 1024[30] state: "Only a baptized man can validly receive Ordination" even though the antecedents for the original canon have been challenged.[31] The Church's official belief was reiterated by Popes Paul VI[32] and John Paul II[33] through their Apostolic Letters.

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[29]Simone de Beauvoir, *The Second Sex*, trans. H. M. Parshley, New York: A. A. Knopf, Inc., 1953, 290.

[30]See *The Code of Canon Law in English Translation*, London: Collins, 1983. Unlike most of the churches arising directly or indirectly from the Reformation of the 16th century, Orthodox churches like the Roman Catholic Church, do not ordain women. See *The San Antonio Report*, Frederick R. Wilson, ed., Geneva: WCC, 1990, 185-186.

[31]Ida Raming argues that the law limiting ordination to men was based on forgeries, mistaken identities and suppressions as well as on the assumption that women were inferior beings. See Ida Raming, *The Exclusion of Women from the Priesthood: Divine Law or Sex Discrimination?* Trans. Norman R. Adams, Metuchen, NJ: Scarecrow Press, 1976. See also Jacqueline Field-Bibb, *Women towards Priesthood: Ministerial Politics and Feminist Praxis*, Cambridge: Cambridge University Press, 1991.

[32]In response to the Letter of Archbishop of Canterbury concerning Women's Ordination, Paul VI directed the Congregation for the Doctrine of the Faith to expound the teaching of the Church on this matter. See Paul VI, *Response to the Letter of His Grace and Most Reverend Dr. F. D. Coggan Archbishop of Canterbury.*

Male predominance in the Roman Curia has a long history with its own justification. The simplest reason seems to be the affirmation of the hierarchical nature of the Church in *Lumen Gentium* of Vatican II. Hierarchy, however, does not mean gradation or pyramidal structure, a meaning developed when the Church fell for imperial and feudal ways of inequalities. As Samuel Rayan describes,

> The Church is hierarchic means that it has a sacred beginning (*hieraarche*) in God's will, in Jesus' ministry and the presence of the Spirit; it is sacred in its origins and foundations, and in the evolutionary dynamism the Spirit imparts to it. It also means that the Church is a well-ordered fellowship endowed with diverse gifts and tasks co-ordinated in love for service and growth of the whole. Jesus thought of his Church as a circle of friends (Jn. 15:12-16).[34]

Closely linked is the notion of 'magisterium' or teaching authority in/of the Church. Interpreting Jesus' view, Rayan argues that Jesus rejected grading, forbade elitist claims, and banned titles of honour (Mt. 23:2-10). He adds that the Spirit of truth will teach us everything (Jn. 14:26; 15:26; 16:13; see also 1 Jn. 2:27; Jer. 31:34). That, however, "does not exclude mutual witnessing within and among believing communities. Such sharing of faith-experience constitutes the Church's universal *magisterium*, which the Spirit makes effective through internal witnessing of Her own (Jn. 15:26-27). This authoritative witnessing-teaching begins beautifully with our mothers."[35]

Evidently, the present Church structure is far from the ideal proposed above. The hierarchy in the Catholic Church is made up exclusively of ordained men, whose role in the hierarchy is to govern the Church. Hence, it is only natural that the members of the hierarchy should occupy most of the positions at the Church's administrative centre.[36] Such a patriarchal

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Concerning the Ordination of Women to the Priesthood (30 November 1975): *AAS* 68 (1976), 599.

[33]John Paul II, *Ordinatio Sacerdotalis* on "Reserving Priestly Ordination to Men Alone" (22 May 1994). See also *Mulieris Dignitatem*, n. 26: *AAS* 80 (1988), 1715.

[34]S. Rayan, "Hierarchy-Religious Relationship in the Context," in *It Shall Not Be So Among You*, Hyderabad: A Forum Publication, 1999, 90.

[35]Rayan, "Hierarchy-Religious Relationship in the Context," 90. For similar views on Jesus' concept and exercise of authority, see Constantine Manalel, "Jesus Movement and Asian Renaissance," *Jeevadhara*, 27,158 (March 1997), 133-153.

[36]Rayan, "Hierarchy-Religious Relationship in the Context," 325.

framework betrays the very gospel principles of equality and fellowship, and reinforces women's subordinate role. It also supports the official Church's teachings in favour of "the male ascendancy over the female."[37] In fact, in his apostolic constitution on the reorganization of the Roman Curia, *Pastor bonus* (1988), Pope John Paul II reiterated that "matters requiring the exercise of power of governance be reserved to those in holy orders."

This position is detrimental to women. For, as long as the priesthood remains the only qualification to one's entry into the ministerial government of the Church, and as long as women are barred from ordination, women have no access to the decision-making bodies in the Church, such as Ecumenical Councils (Can. 339/1), Synod of Bishops (Can. 342), and Episcopal Conferences (Can. 450/1). This unjust exclusion of women from key positions of authority deprives them of their specific contribution to the life and ministry of the Church. Women do not even have a voice in defining their role (the same could be said of the laity as a whole) as they have been given their 'appropriate role'. While women constitute "the large majority of active church members and are the sustaining force..., they have virtually no power within its structure."[38]

3.1. Crux of the Problem

The traditional belief of an exclusively male presence at the Last Supper is crucial to Catholic teaching. It is the foundation on which an all-male Catholic priesthood is solidly built. Critiquing this mindset, S. Anand holds that the basic text is: "Jesus took bread, and blessed, and broke it, and gave it to his disciples..." (Mt. 26:26).[39] He finds an illuminating parallel between the usage of verbs in Matthew 26:26 – *lambanô* (take), *eu-logeô* (bless/thank), *klaô* (break), *didômi* (give) and in the accounts of the multiplication of loaves (Mt. 14:19; 15:36; Mk. 6:41; 8:6; Lk. 9:16; Jn.

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[37]Pearl Drego, "The Place and Role of Women in Church and Society in the Light of Vatican II," in K. Kunnumpuram and L. Fernando, eds., *Quest for an Indian Church*, Anand: Gujarath Sahithya Prakash, 1993, 208.

[38]Davida Foy Crabtree, "Women's Liberation and the Church," in Sarah B. Doely, ed., *Women's Liberation and the Church: The New Demand for Freedom in the Life of the Christian Church*, New York: Association Press, 1970, 19.

[39]Subhash Anand, "The Inculturation of the Eucharistic Liturgy," *VJTR*, 57,5 (1993), 274.

6:11). A similar pattern is found again in the accounts of the meal Jesus had with his disciples after his resurrection (Lk. 24:30; Jn. 21:13).[40]

A feminist reading of the basic text (Mt. 26:26) reveals that it was *bread* and *wine* that Jesus chose to represent him, not Peter or John.[41] Hence, it is absurd to cling on to the 'Last Supper' episode as an exercise in barring women from presiding at the Eucharist. Basing on a profoundly Catholic notion that the Word became flesh (Jn. 1:14) in the womb of a woman, the logical conclusion would be that if at all anyone is worthy of representing Christ, it is only his Mother, Mary (Lk. 2:7). Moreover, it was she who stood along with other women disciples (John being an exception) at the foot of the cross and joined her son in his self-offering to God for the redemption of humanity (Jn. 19:25-26). Furthermore, if the Church truly believes that having been 'baptized into Christ' and 'put on Christ', we have become one in Christ (Gal. 3:26-29) and share the one bread, it follows that "men and women cannot have different Eucharistic identities."[42]

Feminists have consistently upheld that women "must be acknowledged as human and *ekklesial* subjects with equal rights and dignity rather than remain objects of *kyriarchal* theology and clerical governance."[43] At the same time, the feminist position has generally been met with "outright rejection or subtle co-optation."[44] Nonetheless, women have to continue to denounce the structural sin of sexism and clericalism that justifies women's exclusion from Church leadership. This resistance is crucial to the feminist agenda. For, as Schillebeeckx observes, "as long as

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[40]Anand, "The Inculturation of the Eucharistic Liturgy," 274-275. In a highly thought-provoking manner, the author has dealt with the Eucharist (see also 269-293).

[41]I was delighted to find a like-minded view in the work of Lavinia Byrne, *Woman at the Altar: The Ordination of Women in the Roman Catholic Church*, London: Mowbray, 1994, 104.

[42]Byrne, *Woman at the Altar*, 107.

[43]E. Schüssler Fiorenza, "The Emperor Has No Clothes: Democratic Ekklesial Self-Understanding and Kyriocratic Roman Authority," *Concilium* (1999/3), 61. See also Angela Berlis, "The Ordination of Women: A Test Case for Conciliarity," *Concilium* (1999/1), 77-84.

[44]Fiorenza, "The Emperor Has No Clothes," 61.

women are left completely outside all decision-making authorities in the church, there can be no question of real women's liberation."[45]

The criterion for ministry is not the biological factor of being male or female, or the social construction of gender roles. The deciding factor should be the charisma of the individual for a particular ministry/service (see Heb. 4:14-16; 5:1-10).

3.2. Return to Jesus: Key to Liberation

The foregoing reflections reveal an ambiguity, characterized by conflict between the biblical notion of human dignity (Gen. 1:26-27; Gal. 3:26-28) and "the oppressive misogynistic ideas as arising from cultural conditioning. There is a tension between the pseudo-glorification of 'woman' and the degrading teachings and practices concerning the real woman."[46]

Nevertheless, Christian religion can become a force of liberation when we perceive the prophet and liberator in Jesus and recapture the original vision of the Master, who envisaged the Church as a community of "discipleship of equals." That Jesus refused to be a conformist is beyond doubt. He was not bound by the stereotyped norms and regulations of institutionalized religion (e.g., Mk. 2:23-28; 3:1-6; Lk. 13:10-17; 14:1-6; Jn. Chs. 4, 5 & 9). Because of the charismatic nature of his authority, Jesus becomes an "authorized transgressor,"[47] and a radical critique of the Law and cult (Mk. 2:23-28). As Soares-Prabhu observes, such an attitude "inevitably attracts the hostility of the institution."[48]

Against the background of the first century patriarchal culture, Jesus' behaviour towards women was so extraordinary that New Testament scholar Moule cites it as an evidence of scriptural authenticity.[49] He

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[45]Edward Schillebeeckx, *Schillebeeckx Reader*, Robert Schreiter, ed., Edinburgh: T&T Clark, 1986, 238. Field-Bibb in *Women towards Priesthood* offers a feminist analysis of the resistance to women's Ordination and patriarchalisation of ecclesial structures.

[46]C. Arockiasamy, "Women in Christianity," in Sebasti L. Raj, ed., *Quest for Gender Justice: A Critique of the Status of Women in India*, Madras: Satya Nilayam Publications, 1991, 174.

[47]G. Soares-Prabhu, "The Liberative Pedagogy of Jesus: Lessons for an Indian Theology of Liberation," in F. Wilfred, ed., *Leave the Temple: Indian Paths to Human Liberation*, Maryknoll, NY: Orbis Books, 108.

[48]Soares-Prabhu, "The Liberative Pedagogy of Jesus," 105-106.

[49]C. F. D. Moule, *The Phenomenon of the New Testament*, Naperville, Ill: Alice R. Allenson, Co., 1967, 65.

accepted and encouraged women's discipleship and leadership in his mission. Though culturally women's testimony had no legal standing, Jesus acted counter-culturally when he made women's witness as the bedrock of Christian faith (Jn. 20:1; Mt. 28:1-6; Mk. 16:1-6; Lk. 24:1-10). The risen Jesus entrusted to them the resurrection *kerygma* upon which the Church was founded: "Go, tell" (Jn. 20:11-18; see also Mk. 16:7; Mt. 28:9-10; Lk. 24:9). But today women are deprived of their rightful place in the Church, based on the myth of Jesus' institution of an all-male priesthood.

4. Conclusion

Drawing inspiration from Jesus' attitude to law and religion, we discussed briefly the twofold nature of religious laws. A feminist hermeneutical reading of the creation narrative in Genesis 1 & 2 has served to cull out the liberative message of biblical religion. Our study has unearthed the androcentric and misogynist character of Canon Law governing women's exclusion from the Church's leadership structures. Failing to realize that Christian Scriptures and their interpretations, generally, reflect the socio-cultural assumptions of the then society, the authoritative position of the Bible has been exploited by the *magisterium* to give male chauvinism a theological and quasi-divine legitimization. This has encouraged the conservatives in the Church to blindly adhere to irrelevant traditions, unjust laws and customs even in this post-Vatican II era.

Religion can become a liberative force when its followers rise above rigidity and legalism that stifles human spirit and growth. The Church too can become a credible sign of liberation by following the footsteps of Jesus the great liberator (Lk. 4:18-19) whose prophetic nature not only denounced the unjust systems and structures but also announced the good news of the Reign of God, which ultimately fosters a community of 'discipleship of equals'.

The teaching Church that claims to be a champion of human liberty, equality and justice ought to liberate itself from its ideological fetters. Its organizational structure and institutional power should undergo a process of conversion that brings about individual and structural transformation. By its ability to imbibe the spirit of Jesus, the 'authorized transgressor', the Church can become an authentic interpreter of law and religion.

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JESUS' LIBERATIVE APPROACH TO JEWISH LAW AND RELIGION

Sebastian Mullooparambil♦

1. Introduction

Any religion may have in itself seeds of violence and corruption which may, in the course of time, give rise to improper and dehumanizing ideologies and practices. As unjust practices rise up, the fundamental and foundational principles are shaken and differences in the viewpoints and ideologies pave the way for conflicts and struggles, leading to separation and division in the community. Unjust practices of the people also bring about laws and codes of conduct for "the law intervenes only to repress an existing disorder."[1] External attacks and economic defeats of the country may become a threat to a religion and may create a feeling that the divinity has turned against the religious practices of the people. It may result in further accumulating rules and regulations in order to win the favour of the deity. Of course, such restrictions and regulations are necessary for the functioning of any society if it is to progress and develop. However, once they unnecessarily increase and multiply, liberation and freedom of individuals may be in danger.

The Israelite religion has acquired a collection of laws which is seen in the OT as given by Yahweh himself through the mediation of Prophets. Moses brought the Ten Commandments for the betterment of the society but in the course of time they were multiplied into thirty five million laws. This shows the human weakness to create disorder as well as the traditional Jewish legalism to oppress people by multiplying the rules. Coming down from the Mount Sinai, after his encounter with Yahweh, Moses brought both good news and bad news for the people of Israel. The good news was that Yahweh had reduced the large number of rules and regulations into two but the bad news was that the sixth commandment

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[1]S. Lyonnet, "Christian Freedom and the Law of Spirit according to St. Paul," in S. Lyonnet and I. de la Potteire, *The Christian Lives by the Spirit*, New York: Alba House, 1974, 164.

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was still in it. Thus, though laws were reduced into two, there were subdivisions for it because people do not attain fullness individually and collectively all on a sudden. There was still room for the disruption of relationship in the vertical as well as horizontal spheres both between God and a human being and among human beings themselves, and there are possibilities to accumulate restrictions in order to protect the commandment of God. In such a situation it was necessary to liberate Jewish religion from traditional legalism and from the oppressive burden of the law. This has to be done by contextually challenging and prophetically denouncing the system and structures by charismatic figures.

Jesus came into the world to establish the kingdom of God and to proclaim and promote whatever is human and humane. He was born a Jew, as a son of David and son of Abraham, the father of all Israelites (Mt. 1:1-17). The Jewish religion in which he was born was going far away from the spirit of Mosaic Law. The law and religion should remain forces of liberation and help man to have the right relationship with God, with the other and with the world at large. But, unfortunately, it was not the situation at that time and it might have displeased Jesus. He did not come primarily to build a church or to found a religion; the circumstances made him struggle for the total liberation of humanity and he, thus, became the liberator *par excellence*. In fact, his liberation was attained through spiritual revolution. Man gives importance to law, systems, and structures; Jesus, however, primarily considered human person significant. His concern was to liberate human beings from the clutches of law, sin, and death. He had the vision of a new society and a new order of human relationship, where OT has to be put into practice for the wellbeing of human persons. He had a plan and project about how human beings should order their lives in the world and on what values it should be based. He decided that rules and regulations should not chain human person; instead, according to his vision, they should enable him/her to become the light of the world and the salt of the earth (Mt. 5:13-14).

2. Jewish Groups on Law and Religion

The first century Jewish religion consisted of different sects which responded to the requirements of Torah in manifold ways. At that time there were four major Jewish groups such as Pharisees, Sadducees, Essenes/Qumran, and Zealots, all of which were committed to Torah in their own way. They energetically and ostentatiously promoted it and sought to expand its influence among the people. But, unfortunately, this

diversity was characterized by intense competition rather than by multicultural tolerance and liberal spirit.[2]

Pharisees, the separated ones, considered themselves distinguished from rest of the Jews and the Israel as a nation considered itself separated from the other nations by the Law. The Pharisees of Jesus' time stood for the literal practice of the law but Jesus put human person above the Law. They gave the people many injunctions from the tradition of the fathers, though not found in the Mosaic Law. The distinctive feature of Pharisaism was that the detailed decisions of religious law were set either alongside or around the Torah as a fence. These collections of religious laws claimed the same dogmatic validity as the written Torah. Rabbis are of the opinion that tradition is a legal fence designed to protect the faithful against transgressions which might make them guilty of mortal sin.[3] Their first and foremost request was a nomistic order of life worked out down to the slightest detail which aims at fellowship with God. After the exile the Pharisees became the custodians of the Law and they were striving hard for the fulfilment of the Torah. They succeeded in providing people with laws not contained in the Torah on the basis of the tradition of the fathers. Their outlook was not restricted to this world, as they hoped to share in a future resurrection and eternal life.

Sadducees believed that God had revealed only one Law, restricted to the five books of Moses. According to them, the traditions of the fathers were not to be put on par with the Law. Whereas the Sadducees were critical in their understanding of the Law, the Pharisees were bound to a tradition which they viewed as absolute. The principal feature of the Sadducees is their rejection of the Pharisaic tradition, the so-called oral law with its paraphernalia. They held that only what is written in the Law of Moses is to be regarded as an injunction and there is no need to keep that which comes from the tradition of the fathers.[4]

Zealots were the Jewish revolutionaries who engaged in war against the Romans and were active in the resistance movement to fulfil the requirements of Torah. When the Romans turned Judea into a province and conducted a census in preparation for tax assessment, the zealots disagreed and opposed the Jews who cooperated with the census. They criticized the Romans saying that the land belonged to God and the Romans had no right

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[2]J. Becker, *Jesus of Nazareth*, New York: Walter De Gruyter, 1998, 275.
[3]H. F. Weiss, "The Pharisees," *TDNT* 9 (1999), 28.
[4]R. Meyer, "Sadducees," *TDNT* 7 (1999), 50.

to claim the ownership implied by a census and taxation. They upbraided the Jews for their willingness to submit to Roman slavery and for giving up the freedom they had fought so hard to obtain under the Maccabees. The zealots considered the cooperation with Caesar to be an idolatrous transgression of the First Commandment to have "no other God before me." They believed that if they are faithful to the covenant, God would honour their cause by bringing victory in the struggle.[5] But Jesus' views of liberation and freedom were different. Unlike the zealots who engaged in guerrilla warfare, Jesus openly criticized oppressive systems and structures. He visualized personal reform and national restoration along the spiritual lines.

Essenes, a major Jewish sect that existed in Judea at least from the middle of the 2nd century BCE until the revolt in 66-70 ACE, took recourse to ascetical practices to keep the Torah. It is believed that they were the Jews who inhabited Qumran, and their views are reflected in some of the Dead Sea Scrolls. They devoted themselves to the study of sacred writings. Transgressions of the Mosaic Laws and community rules were strictly punished by them with fines and expulsion. Unlike the Essenes who engaged in ascetical practices, Jesus struggled to uplift human person from the taboo, untouchability, etc.

Though at the time of Jesus there were several groups of people who interpreted the Law, Jesus' vision of the Law and interpretation were different. His viewpoint was distinct also from that of the Jewish religious leaders like the chief priests, elders and scribes who upheld the Law but were bent on killing Jesus. They loved the letters of the Law and neglected the spirit of it whereas Jesus had a new vision of things around him which was different from that of the Jewish groups of the first century. His confrontation with the evil spirit (Mt. 4:1-11) shows his distinctness in the understanding and interpretation of the Torah. The Synoptic Gospels present even the evil spirit approaching Jesus with a devilish interpretation of the Scripture. Satan is seen in this narrative as a scripture scholar and he comes to test Jesus who has fasted for 40 days and 40 nights. Devil confronts Jesus quoting from the scripture correctly but interpreting it for protecting his self-interest. Jesus points out the limitations and corrects the interpretation of Satan. Since Jesus had a genuine reflection of the Scripture he could defeat the temptations of the evil spirit by the word of

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[5]See D. Rhoads, "Zealots," *Anchor Bible Dictionary*, vol. 6, New York: Doubleday, 1992, 1044-1050.

God and defend all the opponents successfully. Jesus' vision of the Law and his reflections on it were distinct from the prevalent interpretation of the time because it had its origin in his contemplation on the Mosaic Law and his unique experience with the Father.

3. The Six Antitheses and Its Liberative Force

Jesus' liberative approach to the Law and Jewish religion is clearly seen in the six antitheses in Matthew (chapter 6). Here Jesus presents his renewed understanding of Jewish interpretation of the Mosaic Law in the following striking formula: "You have heard... but I say..."[6] We find Jesus many a time in conflict with others as he fights for justice, liberation, and salvation. His conflict with Jews, especially with the Scribes and the Pharisees, played a significant role in their growing animosity against him which, finally, led to his death. In these antitheses Jesus is in conflict with the Pharisaic interpretation rather than with the Law as such and he is providing a better interpretation. In them, we find Jesus either repudiating or modifying or reinterpreting the statements in the OT. In every case, the antithesis brings a new directive and articulates the law of Jesus.[7] At the same time, he makes it clear that he has not come to abolish law and the prophets but to fulfil them. From Mt. 5:18, it is obvious that Jesus did not oppose the Mosaic Law although his demands surpass that of the Torah. So, Jesus' own words are not contradicting the Torah although his sayings are contrasted with that of the Mosaic Law. In the antitheses he gives a definitive and the fullest meaning to the commandments in the Decalogue concerning anger, adultery, divorce, oaths, retaliation, and love for enemies.

(i) Concerning Anger: In the OT, we read that murder is forbidden, but Jesus changes the Mosaic Law and forbids even getting angry with others (Mt. 5:21-22). According to Moses, those who commit murder will be judged; according to Jesus, however, those who speak insulting and hateful words should be punished. So, not only murder is placed under

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[6]When Jesus quotes from the OT with the phrase "it is written" (e.g., Mt. 4:4, 7, 10; 11:10; Mk. 11:17; Lk. 7:27; 18:31) he is not referring to God's written revelation of the OT but to the oral tradition of the later teachers of the Law. See H. N. Ridderbos, *Matthew*, Grand Rapids: Zondervan, 1987, 103; R. H. Worth, *The Sermon on the Mount: Its Old Testament Roots*, New York: Paulist, 1997, 60.

[7]G. Strecker, *The Sermon on the Mount: An Exegetical Commentary*, Edinburgh: T & T Clark, 1988, 78; see also R. Guelich, "The Antitheses of Matthew 5:21-48," *NTS* 22 (1976), 444-457.

Jesus' verdict but also anything that harms one's relationship with his brother or sister. Jesus was a spiritual revolutionary who came to establish a kingdom based on love, liberation, and shalom/peace. In his kingdom everyone is brother or sister and no harm is to be done to him/her. The unlimited love of God and unrestricted concern to one's brother/sister stands at the heart of Jesus' moral instruction. He stressed mercy without measure, love without bounds, and forgiveness without frontiers.

(ii) Concerning Adultery: Moses condemned adultery; Jesus forbids even looking at a woman with adulterous thought (Mt. 5:27-28). Of course, there is no contradiction between the OT prohibition of adultery and NT prohibition of lust. It is obvious from the imperatives of the prohibition that it is Jesus who is demanding more than the Mosaic Law. In the Gospel of John (7:53-8:11), there is the story of a woman caught up in the act of adultery where the scribes and the Pharisees bring her to Jesus and state: "Moses in the law ordered such women to be stoned. But you – what have you to say about it?" Jesus' answer is: "The man among you who has no sin, let him be the first to cast a stone at her." Those who seized the woman do not bring her to the Roman authorities to execute her but brings her before Jesus who is thought to be a just judge by the public. This may be a trap forcing Jesus to decide between Mosaic Law and the Roman prohibition of executions. The alternatives are the Mosaic Law and Jesus' own moral stance toward sinners. It is interesting that they brought only one party for punishment and let the other escape or was given concession. The response of Jesus is enriching and thought-provoking. He said: "Let anyone among you who is without sin be the first to throw a stone at her" (Jn. 8:7). In this incident, all the accusers may be sinners but their attempt to punish one party shows their hypocrisy; in Jesus' eyes, however, all are equal before the Law.

(iii) Concerning Divorce: Moses permitted divorce asking to give the woman a certificate of divorce. But Jesus restricts that permission and says that "anyone who divorces his wife, except on the ground of unchastity, causes her to commit adultery and whoever marries a divorced woman commits adultery" (Mt. 5:32). Jesus, in his answer argues from Gen. 1:27 and 2:24 that the original intention of God in creation is the union of man and woman in marriage. Therefore, what God has joined together, let no one separate (Mt. 19:6). Here, Jesus prohibits divorce and regards marriage as a permanent covenant between husband and wife. Thus, while teaching them not to divorce he was trying to uphold unity and sacredness of family life. He could also ascertain the indissolubility of marriage more

strongly than ever before. Thus, Jesus upgraded the weak position of women in the society by liberating them from the crutches of male chauvinism. Though in the Jewish circle women were considered as property of the men, Jesus restored them dignity and worth due to them in society.

(iv) Concerning Oaths: The fourth antithesis is concerning oaths with its secondary expansion of swearing by heaven, earth, or Jerusalem. Jesus says: "Again, you have heard that it was said to those of ancient times, 'you shall not swear falsely'... but I say to you not swear at all..." Oaths which were neither false nor irrelevant were permitted in everyday speech in the OT.[8] It was an integral part of daily life that there was a tendency to enforce any statement with an oath.[9] The Mosaic Law tried to safeguard the sanctity of the oath. But it is not permitted in the NT because Jesus requires honesty and sincerity from all followers and insists that all statements made by human beings are true. Thus, Jesus, as the new Messianic Lawgiver, establishes a new order.[10] He not only attacks the misuse of oath but rejects it altogether and says that 'yes' should be 'yes' and 'no' should be 'no'.

(v) Concerning Retaliation: Sometimes Jesus' words are supplementing the Mosaic Law and, at times, he goes far beyond the letter of the text. Moses recommended the precept, "eye for eye and a tooth for a tooth." But Jesus says: "If anyone strikes you on the right cheek turn the other also" (Mt. 5:38-39). The principle of retaliation in the OT demands "life for life, eye for eye, tooth for tooth, hand for hand, foot for foot." This legal maxim is adopted against revenge and rage and it is attested in the Codex Hammurabi as well as in Greek, Roman, and Rabbinical law.[11] Jesus, however, demands from a Christian renunciation of revenge and submission to evil doer and letting himself abide by the popular maxim: "Better to suffer wrong than to do wrong" (1 Cor. 6:1-8).

(vi) Concerning Love for Enemies: Moses required love of neighbour (Lev. 19:18); Jesus, however, required even the love of enemy and asked to pray for the persecutors (Mt. 5:43-45). The old commandment consisted of an order to love one's neighbour and a

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[8]W. D. Davies and D. C. Allison, *Matthew*, ICC, vol. 1, Edinburgh: T & T Clark, 2000, 532.

[9]J. Schneider, "Swear," *TDNT* 5 (1999), 178.

[10]Schneider, "Swear," 178.

[11]Strecker, *The Sermon on the Mount*, 82.

possible understanding of it was to hate one's enemy. The command to hate one's enemy is not attested in the OT. It might have come either from tradition or from the redactions of the evangelist. But the new commandment of Jesus consisted of two injunctions: love your enemy and pray for those who persecute you. While the Mosaic covenant ordered to kill all the Canaanites, the Messianic command consisted of a call to love and pray for one's enemies (Mt. 5:44).[12] Jesus came as the fulfilment of OT promises and he encouraged and demanded unselfish love of friend and foe alike. Jeremiah (31:31-34) had promised that a new covenant will be established which would come into existence when Jesus the redeemer gives a new law to humanity. Jesus came to the world with a new concept the kingdom of God and instituted a new covenant where love of all is the core. He did not eradicate the age-old requirements of Torah, but underlined the internal dimensions of the commandments. He taught a noble ethic in which the love of neighbour has its manifestation in a total self-giving extending even to the enemies. His purpose was to save humanity giving his life as a ransom for many (Mt. 20:28).

Men more often require to be reminded than informed. However, Jesus was not just reminding them of the old Mosaic Law but was informing something new. He was not just putting old wine in new bottles but new wine in fresh bottles. He respected Mosaic Law, its moral provisions, and its ceremonial elements but wanted to redeem human beings from the bondage of sin. We obey the law in order that we may be free but if the obedience to the law does not bring about freedom we are in sin. By overturning the demands of Torah Jesus liberated people from sin and taught that law and religion should become forces of liberation and salvation. This liberation is made possible when all injustices are undone and the restitution of that which is unlawfully acquired is undertaken. When Zachaeus tells Jesus that whatever he has acquired illegally he is giving to the Poor Jesus assures him that "today salvation has come to this house" (Lk. 19:1-9). Thus, Jesus was creating a new world order and a new heaven and earth. When the OT highlights the rules and regulations and projects sin, in the NT the grace of the Lord covers the sin. While the Mosaic Law wounds the person, the gospel of Christ heals him. Different from the OT, in the NT, we see Jesus bringing a new beginning (Mt. 1:1), new wine (9:17), and a new covenant (20:28-29). Overturning the Mosaic

[12]See K. L. Sparks, "Gospel as Conquest: Mosaic Typology in Mt. 28:16-20," *CBQ* 68 (2006), 651.

Torah he brings about the Messianic Torah. In the new world order, the Jewish Temple and its place were replaced by Jesus and his ongoing presence.

4. Jesus' Liberative Approach to Jewish Practices

Jewish law created disorders and violence, if not also dehumanization, in the society by introducing a good number of rules and laws. Detailed regulations concerning tithing, washing, and eating were introduced to sanctify everyday life turning the nation into a spiritual temple by obedience to the written law and oral tradition.[13] As Paul says in Rom. 8:2, the law of the spirit of life in Christ Jesus is meant to set one free from the law of sin and of death. Unfortunately, however, as the law received superiority, relation between man and God and man and man became secondary. Jesus tried to liberate men from the bondage of meaningless observances by putting human need above Sabbath, by subordinating the Law to the wellbeing of a suffering man, by affirming equality of man and woman before the law and upholding that they have equal rights and obligations.

4.1. Jesus' Attitude to Oppression on Sabbath

Observing the Sabbath is one of the Ten Commandments of Moses (Ex. 20:8-11) and the Jews considered it as the most striking aspect of their religious practice. They understood the Sabbath as a divine regulation and it was observed from the beginning of creation (Gen. 2:2-3) since God rested from all work on the seventh day. They believed that God sanctified and blessed the seventh day as a day of rest and ordered the humanity to observe it as a restful day.[14] The command to keep Sabbath is directed not only to adults but to children, servants, and foreigners (Ex. 20:8-11). The deliberate violation of it was punished with severe penalty. So, they observed it faithfully by keeping themselves away from all work and allowing rest to slaves and animals (Ex. 23:12). But the laws which were made for the wellbeing of men became a medium of burden and oppression in the course of time. In order to keep the Sabbath they prohibited gathering wood, making a fire and cooking food on Sabbath (Ex. 6; 35:2 ff.). They pledged themselves not to buy things from gentiles on this day (Neh. 10:31). They even remained passive in the face of

[13]J. H. Charlesworth, *Jesus' Jewishness*, New York: The Crossroad, 1991, 97-98.
[14]Becker, *Jesus of Nazareth*, 297.

external attack; during the Maccabaean revolt many pious Jews were killed because they did not defend themselves when attacked by the enemies on Sabbath. They will not walk more than 450 meters or do any work or talk about work. Further, they will not carry water or children, neither will they strike a beast or pick up edible fruit. According to the Jewish historian Josephus, the Essenes would not light a fire, remove a vessel or even go to stool to observe the day perfectly (*War* 2.147).

For Jesus, however, man and his needs are supreme. Jesus' liberative approach is seen in his powerful declaration that Sabbath was made for man and not man for Sabbath (Mk. 2:27). When the scribes and the Pharisees exaggerated the prohibitions of Sabbath and interpreted the law according to their convenience, Jesus avoided exaggerated legalism and defended human freedom. In the controversy over Sabbath Jesus tells that David entered the house of God and ate the bread and violated the law. If David could do it, why not the apostles? Thus, Jesus declared human need superior than mere observances.

4.2. Healing of the Man with a Withered Hand (Mk. 3:1-6)

Jewish leaders' love for the letter of the Law reached its extreme when they denied healing to a sick man on the day of rest. An example can be seen in the gospels where we find Jesus entering a synagogue on a Sabbath and encountering there a man with a withered hand. The opponents observed whether he would heal on Sabbath. They were actually "watching in order to accuse him" (3:2) but Jesus understood their hypocrisy and confronted it boldly. He tells the disabled man to stand in the middle and it shatters the illusory peace of Sabbath worship in the synagogue. He asks them a question: "Is it lawful on the Sabbath to do good or to do harm, to save life or to kill?" (3:4). The question to the congregation, and to the Pharisees in particular (3:4), confronts them with the issue of the intention of Sabbath law and, therefore, of what constitutes proper Sabbath observance. They keep silence and it says that they care more about their custom than they do about their brother. They are more eager to accuse Jesus than to restore the man's withered hand. Though Rabbinic Literature speaks of thirty-nine explicit violations of the Sabbath, the healing of physical disability is not mentioned among them. Jesus restores the hand of the sick man by a simple command: "stretch out your hand." This makes the religious and political leaders to conspire in order to kill Jesus (3:6). Though the Sabbath was designed to enhance life, it becomes an occasion for

hostility that brings death, even that of the lord of Sabbath. Here Jesus violates the Sabbath rule by liberating the man and gives a lesson that law and religion should be forces of liberation than damnation.

4.3. Touching of a Leper

While Jesus was travelling through Galilee, a leper approached him and said: "If you will, you can make me clean" (Mk. 1:40). Jesus in his compassion and pity touched the man and immediately he was made clean. Leprosy was considered by the Jews as a terrific disease and it made a person unclean ritually as well as socially. Hence, he is an outcaste in the society and is cut off from all social and religious life and is forbidden to participate in the community worship. The disease made the man perpetually unclean (Lev. 13:45-47) and must have caused deep grief as it prevented normal relationships and fellowship with one's neighbours and friends. In the OT, "leprosy" is frequently regarded as a punishment for serious sin (Num. 12:1015; see also Deut. 28:27, 35; 2 Kg. 5:25-27). The Levitical law (Lev. 13:45-46) insists that the leper shall wear torn clothes, shall have dishevelled hair, and shall live alone in a house outside the camp. He has to go about calling out "unclean, unclean" so that no one would approach him and be contaminated. Physical contact with such people rendered a person "unclean." Leprosy was thought to be equal to death because of the paleness of the person and the isolation from community. It was believed that someone who came in contact with a leper would be like one who had touched a dead body. So, a person with leprosy was considered as living among the dead; cure of leprosy was considered by the sick as regaining of his/her life. In this situation the leper takes the maximum risk and violates the social codes in order to be cured. Jesus heals him and sends him immediately to the priest showing maximum respect for the Law. The authority of Jesus and a priest is differentiated in this incident: Jesus can heal leprosy while the priest can only declare someone to be clean. Clearly, Jesus is seen as superior.

Jesus considered the healing and restoration of a person asserting his full Jewish citizenship superior to the technical violation of the Law in the act of touching. Touching itself is a violation of the Law; this will make Jesus unclean. Jesus touched the leper not to violate the Law but to heal a person, thereby liberating him from the difficulties of physical handicap. Thus, he subordinates the Law to the wellbeing of a suffering man and upholds equality of all before the Law. For giving certificate, the priest

himself had to touch the leper and that itself had constituted violation of the Law. If the priest can violate the Law why can't Jesus the High Priest and the Lord of Sabbath? Compared to the priests, Jesus truly practised the Jewish Law in the sense that he kept always the intention of the Law. He came into clash with the authorities because they were keen in keeping the letters of the Law rather than the spirit.

4.4. Plucking and Eating Grain and the Jewish Law (2:23-28)

In this episode, the Pharisees confront Jesus' disciples for violating the Sabbath Law. Though the disciples apparently break the law, the question is addressed to Jesus. They assume that the disciples' behaviour is illegal and their master is responsible for the violation of the law.[15] On any other day, the disciples could go through the grain field and pluck a few heads of grain to eat as they walked along. The evangelist Luke tells that they rubbed the heads in their hands. This makes the Pharisees to accuse that they were doing something that is not legally permitted. The plucking and eating a little grain was allowed to the stranger or the poor by law (Deut. 23:25). Deuteronomy 23:25 states: "If you go into your neighbour's standing grain, you may pluck the ears with your hand, but you may not put a sickle to your neighbour's standing grain." The issue became a controversy because the disciples' actions implicitly constituted "work" on the Sabbath.[16] The opponents considered plucking as reaping, which is a form of work. This was prohibited on the Sabbath (Exod. 34:21) and listed in the *Mishnah* explicitly as one of the things one must not do on the day of rest. They might also have violated the prohibition against eating on the Sabbath something not prepared in advance. While Mark does not mention "eating," Matthew (12:1) and Luke (6:1) say that the disciples plucked and ate.

Jesus calls the attention of the opponents to the action by David (1 Sam. 21:1-6) who was a man after God's own heart. In 1 Sam. 21:1-6, we read that the Scripture admits exceptions to the law and gives priority for human need over law. Sabbath was instituted by God to the benefit of man and for the welfare of humankind by bringing joy and refreshment to man who works throughout the week. Jesus returns to the original intent of the Law by rejecting later traditions and by giving priority to human person over law. The saying that "the Sabbath was made for man, not man for the

[15]R. A. Guelich, *Mark*, Texas: Word Books, 1989, 128.

[16]J. R. Donahue and D. J. Harrington, *The Gospel of Mark*, Minnesota: The Liturgical Press, 2002, 110.

Sabbath" challenges the legalism which makes the Sabbath a burden to bear rather than a way to freedom. He criticizes Pharisees who uphold the 'tradition of the elders" (7:1-13; see also Mt. 23:23) above everything. His response clearly reveals how he understands and interprets the law. In his view, what was really wrong with the Pharisees was their belief that God was only concerned with the demands of the Law.

Jesus' response to the Law stems from his relationship with his Father whom he knew as one who was kind and loving, and more concerned with tax collectors and sinners than for those who were conventionally religious. For one who knows the Father, love, compassion, and humility were supreme and have priority over all laws and ritual observances. The Pharisees considered God as a judge and loved him by obeying rules and regulations. Jesus, on the contrary, loved God by loving human persons, by helping them in their needs. Jesus understands the law as gift to man and not as a burden and satisfying hunger as a superior and basic need. He subordinates the Sabbath Law to human person, especially to the one who is hungry and needy. Clearly, Jesus' statement is a challenge to the whole of Judaic legislation. For Jesus nothing, not even the most sacred law, may be allowed to obstruct liberation of the human person; instead it is the human person who is more worthy of respect and reverence.

4.5. Jewish Religion and Oppression of Women

The Jewish society was a male-dominated one and there were many oppressive restrictions on women. The worst thing was that the oppression was considered as the will of God. But Jesus, through his words and actions, introduced a revolutionary attitude towards women. The wife had to address her husband 'lord' (Gen. 18:12; Amos 4:1), just as a slave used to call his master or a citizen his king. According to this, till the age of twelve a girl was under the dominion of her father, a married woman was under the dominion of her husband and after the death of the husband she was under the control of the eldest son. So, the women had no freedom of their own and were generally regarded as inferior to men. A father could sell his daughter (Lev. 21:7) or marry her to a deformed man. Girls were frequently betrothed at twelve or thirteen years of age. In the ancient Jewish culture, a wife was considered the property of her husband (see Ex. 20:17). The husband could divorce his wife (Dt. 24:1-4), though she herself cannot do the same to her

husband. According to Dt. 16:16, women were not obliged to attend the three important annual pilgrim feasts, namely, the Passover, the Pentecost, and the feast of Tabernacles (see also Ex. 23:17).[17] Girls were not taught the scriptures and schools were for boys only. The women's education was mainly in household tasks. In the temple their court was fifteen steps below the men's court, and women were forbidden to enter the upper court. A woman's testimony was not admitted as evidence in a court. Sterility was attributed only to women, and it was considered as God's punishment (Lk. 1:25).

Jesus understood these oppressive attitudes as damaging the relationship between persons in the society and family. He emphasized the dignity of every human person with his or her inner worth.[18] He insisted on the equality of man and woman and affirmed that both have equal rights and obligations. He never saw woman as the property of man but as his companion and partner (see Gen. 2:18). In this sense, Jesus could be seen as a great revolutionary who liberated women from the oppression of religious laws. He emphasized the unity, the indissolubility and sacredness of marriage and considered the negation of it as violation of divine will. Jesus allowed himself to be touched and anointed by a sinful woman; further, he touched and healed a woman suffering from bleeding (see Mk. 5:24-30), he lifted the hand of Simon Peter's mother-in-law and healed her of fever (Mk. 1:29-31), and he accepted women disciples (Lk. 8:1-3) and, thus, broke the age-old conventions. In a society where women were not allowed to study the Torah, Jesus taught women along with men (see Mk. 6:34 and Mt. 14:21-15:38; see also Mt. 5:1). He praised Mary who sat at his feet and listened to his words (see Lk. 10:38-42; see also Acts 22:3). Thus, he proved that for him acts of love, compassion, and pity are higher values than keeping the letter of the Law.

4.6. Jesus' Attack on Traditional Customs

Several times we find Jesus attacking the hypocrisy of his contemporaries. Once, he called a person to become his disciple but he postponed the response asking permission to go and bury his father (Mt. 8:18-21). Jesus' call is intense and he wants the immediate response from a disciple. But the questioner wants to fulfil the traditional customs. Sanders says: "What is important here is to see the force of the negative thrust: Jesus

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[17]B. Witherington, "Women," *Anchor Bible Dictionary*, vol. 6, 957.

[18]V. M. Sinton, "Woman," *New Bible Dictionary*, I. H. Marshal *et al.*, ed., Secunderabad: J.M. Books, 1997, 1247.

consciously requires disobedience of a commandment understood by all Jews to have been given by God."[19] He adds: "At least once Jesus was willing to say that following Him superseded the requirements of piety and the Torah."[20] Jesus was not against practising the moral provisions of the Mosaic Law. He exhorted to offer gifts in the temple (Mt. 5:23), to give alms (Mt. 6:2), and to fast (Mt. 6:16). His objection was against the interpretation and practice of the Law according to one's own convenience.

On another occasion, Jesus tells that there is nothing outside that, by going in, can defile a person, but the things that come out are what defile a person (Mk. 7:15). He tells it because the Jews used to wash their hands before eating anything and they thought it is improper to eat with unwashed hands. It was not a biblical requirement and, mostly, even the Pharisees washed their hands only before Sabbath and festival meals.[21] On the question of food Jesus declared all food clean (Mk. 7:12) and pointed out that what goes out of his mouth, his word that defiles a person. Yet another instance is the parable of the Good Samaritan where the priest and Levite do not help the man in need because of their purity concerns. Here Jesus attacks the popular and clerical orthodoxy that was prevalent at that time. God gave Moses the Law but the religious traditions that were developed in course of time were against Mosaic as well as God's interests. Jesus upheld the Mosaic Law saying that "I have come not to abolish" (Mt. 5:17). Actually, he was departing from the scribes and Pharisees who were interpreting Law according to their convenience. Jesus' mission was to liberate human beings from the clutches of Law and its manifold interpretations. The priest and the Levite paid more importance to the letter of the Law by neglecting the intention of the Law. But Jesus cherished human life as more important than the customs and traditions.

5. Jesus: A New Moses with a New Law

Law and religion should act as forces of liberation from sin, slavery, and death, thus leading to the establishment of the kingdom of God. The law oriented religion of Judaism, however, was found to be preventing the

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[19]E. P. Sanders, *Jesus and Judaism*, Philadelphia: Fortress, 1985, 255; see also Worth, *The Sermon*, 88.

[20]Sanders, *Jesus and Judaism*, 255.

[21]E. P. Sanders, *Jewish Law from Jesus to the Mishnah*, London: SCM, 1990, 90.

establishment of God's kingdom and Jesus fought against the oppressive and dehumanizing structures. He came as God's messiah who did many miracles, instructed through parables, and taught the principles of a new but noble ethic. He made friendship with women, table fellowship with tax collectors and sinners, and opened the horizons of discipleship to the marginalized and discriminated in the society. He chose the economically poor and backward as his colleagues, loved the socially outcaste and sinners and healed the impure even in forbidden places and times. Contrary to the prevailing unjust and discriminating attitude held towards women and children, Jesus held a liberative approach to them especially to the downtrodden and the backward classes. His preaching, teaching, and healing elucidate his distinctive view of his vision and mission.

Jesus' view of life is distinct from that of his predecessors and his perspective is different from the legalistic attitude of Jewish religious groups. As Jesus' message constituted new wine, the old bottles of Jewish minds could not contain it. So, the evangelist Matthew considers the teachings of Jesus as a new Pentateuch and presents Jesus as the New Moses who brought a new law crystallised in five discourses where he presents his synthesis of the teachings of Jesus. While Moses received the Law from Yahweh Jesus himself gives the new law.[22] While the old Law was given on Mount Sinai, in the Sermon on the Mount, the new law is given by Jesus, the new Moses, on another 'mountain'.[23] According to Matthew, Jesus was a new law giver and teacher who came to establish a kingdom based on love, peace, and freedom. As a teacher he made five long sermons corresponding to the five books of Pentateuch. He based his outline on the transitional formulas which occur at the end of the five major discourses (7:28; 11:1; 13:53; 19:1 and 26:1). The formulas divided the Gospel into five 'books' on the analogy of the Pentateuch and each book consisted of a narrative and a sermon. Each part culminated with a repetitive formula, "And when Jesus finished...," which concluded the books and lead the reader to the next book after a discourse was finished.

The Yale scholar B. W. Bacon adopts the new Moses typology and presents the structure of Matthew's gospel as follows.[24] Chapters 1-2

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[22]F. T. Moloney, *The Living Voice of the Gospel*, New York: Paulist, 1986, 135.

[23]D. C. Allison, *The New Moses: A Matthean Typology*, Edinburgh: T & T Clark, 1993, 173.

[24]B. W. Bacon, "The 'Five Books' of Matthew against the Jews," *The Expositor* 15 (1918), 56-66. See also B. W. Bacon, *Studies in Matthew*, New York: Henry Holt, 1930, xvii; B. W. Bacon, "Jesus and the Law: A Study of the First

function as prologue and 26:2-28:20 as epilogue and the rest of the gospel belong to five books, each beginning with a sermon and ending with a discourse and the concluding formula. Book 1: (a) 3:1-4:25 narrative material (b) 5:1-7:27 sermon on the mount (c) 7:28-29 formula; Book 2: (a) 8:1-9:35 narrative material (b) 9:36-10:42 discourse on mission (c) 11:1 formula; Book 3: (a) 11:2-12:50 narrative material (b) 13:1-52 teaching on the kingdom (c) 13:53 formula; Book 4: (a) 12:54-17:21 Narrative material (b) discourse on mission (c) 19:1 formula; Book 5: (a) 19:2-22:46 narrative material (b) 23:1-25:46 discourse on eschatology (c) 26:1 formula.

Moses is supposed to have written the Torah and, in the NT, the evangelist Matthew is writing a new Pentateuch recording five speeches or extended discourses of Jesus. Matthew presents Jesus as a great teacher, prophet, and law giver who is equal to or greater than Moses. He is keen in interpreting the new law which Jesus has brought. The exhortation to enter into a new era can be found in the invitation "the time is fulfilled, and the kingdom of God has come near; repent and believe in the good news" (Mk. 1:15). In the place of the old law Jesus brought up a new law, the core of which we find in the discourses especially in the Sermon of the Mount. The sermon "appears as the New Messianic Law, proclaimed by Jesus, in intimate association with his messianic activity, as a Law that is to transform the world."[25] In the new Pentateuch the old law gives way to what Jesus has commanded, the Mosaic circumcision to baptism, and particularism to universalism. The principles like love, equality, justice, reverence, and respect for one another become the key values of the Messianic Law.

6. Conclusion

Jesus' liberative approach to the Jewish law and religion can be seen in his teaching on the love of God and the love of neighbour with a special emphasis on love of one's enemies. Though Jesus was a law abiding Jew, he reinterpreted the Jewish customs and laws in such a way that law and religion have to be responsible for the two aspects, viz., the relation to God

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'Book' of Matthew (Mt. 3-7)," *JBL* 47 (1928), 203-231. G. D. Kilpatrick, *The Origins of the Gospel*, 135-136, has adopted Bacon's analysis with reservations.

[25]G. M. Soares Prabhu, "The Dharma of Jesus," *Bible Bhashyam* 6 (1980), 364; see also L. Ridez, *Die Bergpredigt: Mensch sein nach Jesus*, Zuerich: Benziger, 1979, 28-29.

and relation to human beings. When one of them is negated religion may become a force of damnation that of liberation and law may become a vessel of slavery rather than a medium of freedom. Though the new love commandment that ensures love of God and love of neighbour was derived from the OT, Jesus who gave this commandment to his disciples went a step further exhorting them to love even the enemies. Of course, he respected the Mosaic Law, its moral provisions, its ceremonial elements (Mt. 5:17-20) and instructed people to respect it (Mt. 5:23; 6:2, 16) but he radically affirmed obeying the law as doing God's will. He made it clear that he has come neither to dismiss the Torah nor to release his followers from its imperatives but to ensure them liberation and peace by fulfilling God's will. Since Jewish customs and traditions were many a time contrary to God's will Jesus reinterpreted them, removed the key boundary marker between Jews and gentiles, held strict views on divorce, and emphasized love of neighbour as central to the law. He freely interpreted the written law, criticized the purity rules, kept himself away from minute priestly concerns, and opened him up to tax collectors and sinners. Thus, Jesus the new Moses established a new law the core of which is love and according to which one achieves freedom when one loves God and neighbour.

The liberative approach of Jesus to Jewish law and religion was explicit not only in his teachings but also in his actions. He liberated men from law, sin, and death not through some external actions but through his own death on the cross. Through his death he united to God every human being who was alienated from the Father through the meaningless observance of rules and regulations. Thus, human beings were saved from the bondage of law and its observances and became capable of having personal relationship with Jesus. After his departure Jesus sent his spirit which is the life principle and the source of freedom. The first Christians, thus, being liberated from the oppressive burdens of the Law experienced the spirit.[26] The old Law was, thus, replaced by the new Law which is primarily the grace of the Holy Spirit. Jesus now became the end of the Law and everyone who has faith in him and undergoes baptism is justified (Rom. 10:4). Where the spirit of the Lord is, there is freedom (2 Cor. 3:17) and when one is liberated from sin he enjoys freedom and produces the fruits of the spirit.

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[26]G. Spicq, *St. Paul and Christian Living*, Dublin: Gill, 1964, 66; Soares Prabhu, "The Dharma of Jesus," 373.

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CANON LAW
Liberative or Restrictive?

Cherian Thunduparampil♦

1. Introduction

'Law', as a term or concept, has always something to do with order, justice, and common good. Laws have relevance mainly in the context of a society or community of human beings. One of the things that a human being likes most, generally, is to be free and independent. To a great extend, it is good and healthy for the growth, development, and blossoming of both individuals and communities/societies. At the same time, it is our experience that human beings cannot remain isolated islands. Relationship is one of the important characteristic features of human beings as social being. Therefore, while exercising and enjoying his/her freedom for one's own personal growth, he/she should not forget the fact that the other also has the same amount of personal freedom and wants to benefit from it. Here arise the questions of law, order, justice, and common good. One of the things that man most dislikes or resists or even hates is control, restrictions and limitations or boundaries.

Imagine the situation where everyone wants to exercise his/her freedom in the time, place and a manner that appeal him and him only. Conflicts and clashes and even destruction of the individual and society are certain. For example, consider the air, rail and road traffic rules. The red, green, and yellow lights along the roads do constrain the passengers, especially those travelling by vehicles, but it is with a view to saving many lives and avoiding chaos, confusions, and unnecessary delay. In this background of human likes and dislikes, this issue of *Journal of Dharma* dealing with the question whether religion and law are forces of liberation or not is very relevant and effective. In the following pages, my attempt is only to pose certain challenges for the readers to decide for themselves, if the laws, especially, in the church, are liberative/salvific or restrictive and destructive.

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2. The Ultimate Goal of Canon Law

The *Codex Iuris Canonci* of 1983[1] consists of 1752 canons that govern the external life of the Church. After having enumerated 1751 canons dealing with various themes, the last canon of the code states: "Salvation of souls is the supreme law in the Church."[2] It needs no interpretation; it is intelligible to every faithful with normal human reason. It means all the above laws, that is, the 1751 canons of the code are to facilitate the soul of the faithful to be free from earthly entanglements and to attain eternal welfare. All other laws are to assist the attainment of this ultimate aim as far as the Catholic Teachings and legislations are concerned. This seems, however, to be a highly spiritual goal. But man is not only spiritual; he is endowed with a body as well. That is, he lives in this visible world of material realities as a social human being. Therefore, church has also to take care of various other aspects that concern the integral growth of the individual. .

Vatican Council II teaches that man is at the same time a complex reality: "The society structured with hierarchical organs and the mystical body of Christ, the visible society and the spiritual community, the earthly church and the church endowed with the heavenly riches, are not to be thought of as two realities. On the contrary, they form one complex reality which comes together from a human and divine element."[3] Besides, he is also a social human being. He lives and acts in this society. Therefore, as a social human being he has to relate himself to the environment and the people around. That is, while one is striving to achieve perfection and the aforementioned ultimate goal, he has, at the same time, also to be aware of the fact that he lives in this world encountering all raw facts of life. His onward march should not in any way hinder others also from pursuing the same or even other goals they have.

The members of this larger society belong to various religions, sects, and denominations. The Supreme Being or God is addressed differently by diverse religions. All of them speak about salvation or its equivalent, but in various ways. Whatever the differences are, it is a fact that all religions

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[1] *Codex Iuris Canonici*, Auctoritate Ioannis Pauli PP. II promulgatus, AAS 75 (1983), Pars II, 1-317; for the English version used in this article, see The Canon Law Society of Great Britain and Ireland, *The Code of Canon Law*, Bangalore: Theological Publications in India, 1983. Further references to this document will be given as CIC.

[2] CIC 1983, c. 1752.

[3] LG, 8.

profess and stand for noble values. The ways and means they propose to their followers are also different. In many parts of the world there exist, in the same place, several religions and religious communities. India, for example, is known for its religious pluralism and secularism. In this sense we can say that man does not simply exist but *coexists*; so is the case with all religions. Coexistence is possible only if there is mutual understanding, recognition, and harmony. This means that man, while being free and enjoying his freedom, has to respect the freedom of others also.

As there are differences in the thinking pattern, value systems, language, religio-political, and economic contexts, formation and various other factors, this harmony need not spring spontaneously in the society. Therefore, there emerge norms, rules, and regulations in order to prevent disharmony and disunity and to bring about order in the society. Besides the rules and regulations that every state or country legislate in view of common good, various religions or sects also will have their own written and unwritten rules and regulations.

In such a context, a discussion on religion and law as forces of liberation is very relevant. For, religions cater to the spiritual wellbeing of the faithful, at the same time, without neglecting the secular dimension of their lives. Jesus told: "Render, therefore, to Caesar the things that are Caesar's, and to God the things that are God's" (Mt. 22:21). Law, in general, takes care of justice, order, and harmony in society in view of the individual as well as the common good. For instance, canon law, the laws of the Catholic Church, canonizes several of the civil laws which are inevitable for the societal life and for the achievement of the set goals.

3. The Function of Law in the Church

Is law liberative or restraining? A reflection on the function of law in any society would give us an answer to the question. The function of laws in a society is to facilitate social cohesion, order, and the safety of all. Positively, law brings about circumstances and atmosphere that facilitate the creation of order, harmony, and unity in the society ensuring justice and common good; negatively, however, law prevents the emergence of circumstances and atmosphere that would create or enhance chaos, confusion, disharmony and discord in the society.

Here, one has to be very prudent and cautious. Otherwise law might turn out to be a burden that constrains the subjects as well as the legislators themselves. If one becomes a slave to the laws and regulations in the

society, it would do more harm than the desired good. If the spirit of the law, that is, the real meaning, function, purpose, and scope of law, is forgotten or neglected there might arise the danger of slavery to law. Ledilsas Örsy characterizes this danger as "sickness of legalism."[4] For legalists, law is the most important thing; the spirit and values that, in fact, motivate the creation of a particular law, for them, would become insignificant or totally irrelevant. Őrsy writes:

> No one has given a better description of the havoc that it can cause, especially in religious communities, than Paul. The problem, of course, had been identified by Jesus who showed dramatically how the right order was reversed: in the understanding of the priests and lawyers, the law of Sabbath became a value in itself and displaced the very value that it was meant to support in the first place.[5]

He also points out that such sickness may bring about various consequences such as disorders and disunity. Jesus who came not to destroy laws but to fulfil it (Mt. 5:17) questioned the legalism of the Pharisees and the Scribes when he said: "Sabbath is not for Sabbath but for man" (Mk. 2:28). By inviting them to revive the spirit of law, Jesus wanted to liberate them from slavery to the letter of the law.

If law and the legal structures are looked upon as end in themselves, the aforementioned danger is due to emerge. In fact, law is not an end in itself, instead, it functions as an instrument, a specific, powerful, coercive and persuasive instrument that binds and prompts the subjects to assimilate the values. Wherever due freedom and justice are curtailed, blocked, or denied to the individuals, law comes as an aid in regaining and restoring the same by legal protective measures. Law prompts the subjects through creative ways, directions, and suggestions and with juridical effects to assimilate the values, to recognize the freedom and rights of other fellow human beings, and to mete out justice to all. If this prompting also fails to bring about the desired effect, then it binds the same subjects with some sanctions. These prompting and binding are not to be viewed negatively, but positively. For, this is to ensure, enforce, and enhance the freedom of all. Those who hold on to individual interests, or are selfish, consider that these rules might seem to be restrictive.

If we look into the emergence of laws it would be still clearer:

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[4]Ladislas Őrsy, *Theology and Canon Law: New Horizons for Legislation and Interpretation*, Collegeville, Minnesota: The Liturgical Press, 1992, 95.

[5]Őrsy, *Theology and Canon Law*, 95.

> ... the reasons behind the emergence of most of the complex rules, regulations and other restrictive measures that govern the society are the anomalies or chaotic circumstance that arose in the society in the course of human history. Whenever such things happened they needed to be controlled, checked and set aright so that there emerged an atmosphere conducive to the life and smooth functioning of the society as well as individuals.[6]

Indicating the life enhancing dimension of law in any society, the author of this article pointed to an example in a previous issue of the *Journal of Dharma* thus: "For example, recently in the wake of the September 11, 2001 attack on the World Trade Centres in America, almost all nations especially the developed countries have established very strict and tight security measures for the screening of the passengers and their flights. One may think that it has made life very miserable and that it curtails one's freedom to travel anywhere freely. But in fact such kinds of restrictions are to ensure and protect the lives of hundreds and thousands who travel by flights."[7] Are these very stringent check-in measures not a limitation to the freedom of the individual? Indeed, in one way! Apparently, the passenger, while going through all sorts of interrogations and clearances, looses much of his time, sometimes even money and so on. But are these limitations or restrictions not liberative? For the hundreds and thousands of passengers who daily travel by flight and their near and dear ones and dependents, these limitations are certainly a comfort! They liberate the passengers from unnecessary anxiety over the safety of their flight. It depends on how one looks at law. The readers can, therefore, decide if the laws are liberative or constraining.

4. Biblical Basis for the Liberative Function of Law

God of the Old Testament (OT) makes a covenant with the Israelites. This covenant is the foundation of all laws in the OT. The election of the people of Israel and the act of their liberation come out of God's mercy. The Decalogue (Ex. 20:2-17; Dt. 5:6-21) or the Ten Commandments[8] are both

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[6]Cherian Thuduparampil, "Life and Law: Canon Law and Its Life Enhancing Dimensions," *Journal of Dharma* 30, 1 (January-March 2005), 42.

[7]Thunduparampil, "Life and Law," 43.

[8]George Nedungatt, "Law in Old Testament," Unpublished Class Notes, 7. He holds that these Ten Commandments are, to use the modern terminology, both "canon law" and "civil law" for the Israelites.

the ethical and juridical laws for the Israelites. "Say therefore to the people of Israel, 'I am the Lord, and I will bring you out from under the burdens of the Egyptians, and I will deliver you from the bondage, and I will redeem you with an outstretched arm and with great acts of judgment, and I will take you for my people, and I will be your God; and you shall know that I am the Lord your God, who has brought you out from under the burdens of the Egyptians" (Ex. 6:6-7). In the Book of Deuteronomy we read: "I am the Lord, your God, who brought you out of the land of Egypt, out of the house of bondage. You shall have no other gods before me" (Dt. 5:6-7). We see that the God of Israel, out of his mercy, elects them and liberates them from the bondage of the Egyptians. "For you are a people holy to the Lord your God; the Lord your God has chosen you to be a people for his own possession... It was not because you were more in number than any other people that the Lord set his love upon you and chose you..." (Dt. 7:6-7). Also, it was not because of their righteousness either (Dt. 9:6). The God of Israel presents himself, thus, as the God of liberation. He offers them political or social as well as spiritual freedom.

As part of the covenant, he gives them laws. Note, however, that these laws are not to create a new relationship. They are, instead, an invitation to the elected or the chosen ones to remain in the relationship with Yahweh. "So you shall keep the commandments of the Lord your God, by walking in his ways and by fearing him... Take heed lest you forget the Lord your God, by not keeping his commandments and his ordinances and his statutes, which I command you this day... And if you forget the Lord your God and go after other gods and serve them and worship them, I solemnly warn you this day that you shall surely perish" (Dt. 8:6, 11, 15 and 19; see also Dt. 7:11). For the people, therefore, to retain and maintain the relationship and the freedom into which God has led them and to continue to be blessed (Dt. 7:13), he gives them the Ten Commandments.

God reminds them to be always aware of the liberative act of Yahweh and to keep and observe his words and, thus, to show the same kind of mercy to others: "You shall not pervert the justice due to the sojourner or to the fatherless, or take a widow's garment in pledge; but you shall remember that you were a slave in Egypt and the Lord your God redeemed you from there; therefore I command you to do this... You shall remember that you were a slave in the land of Egypt; therefore, I command you to do that" (Dt. 24:17-22). Again, in Exodus, we read: "You shall not oppress a stranger; you know the heart of a stranger, for you were

strangers in the land of Egypt" (Ex. 23:9). God gives laws and expects the observance of them so that they live and inherit the land promised to them. "You shall appoint judges and officers in all your towns which the Lord your God gives you, according to your tribes; and they shall judge the people with righteous judgment. You shall not pervert justice; you shall not show partiality; and you shall not take a bribe, for a bribe blinds the eyes of the wise and subverts the cause of the righteous. Justice, and only justice, you shall follow, that you may live and inherit the land which the Lord your God gives you" (Dt. 16:18-20). God does not constrain them, but gives freedom of choice of good or bad: "... I have set before you life and death, blessings and curse; therefore, choose life, that you and your descendants may live, loving the Lord your God, obeying his voice, and cleaving to him; for that means life to you and length of days, that you may dwell in the land which the Lord swore to your fathers, to Abraham, to Isaac, and to Jacob, to give them" (Dt. 30:19).

Through these commandments Yahweh helps them not to go blind in discharging justice. Thus, these laws function as a motivating force that enhances their lives and relationship with Yahweh and encourages them to give others, especially the downtrodden and suppressed, their due. Through these statutes and ordinances, which constitute positive directions and suggestions for action, Yahweh protects them from being under the yoke anymore. For, he is at the same time God of mercy and steadfast love; he is at the same time a jealous God (Dt. 6:15) who turns against the iniquity of those who hate him (Dt. 5:9-10; see also Ps. 33:5). St. Paul would say: "For Freedom Christ has set us free; stand fast, therefore, and do not submit again to a yoke of slavery" (Gal. 5:1).

When we come to the New Testament we understand that the very advent of Jesus was to liberate people from all sorts of bondage, spiritual as well as social/political. Before he began his public ministry Jesus, moved by the Spirit, declared, quoting from the Book of Isaiah, thus: "The spirit of the Lord is upon me, because he has anointed me to preach good news to the poor. He has sent me to proclaim release to the captives and recovering of sight to the blind, to set at liberty those who are oppressed, to proclaim the acceptable year of the Lord" (Lk. 4:18-19). His continued preaching and teaching reflect the realization of the initial declaration. "Jesus came not to destroy the law but to fulfil it" (Mt. 5:17). There is the Old Testament prescription that no one should oppress others. "Whoever sacrifices to any god, save to the Lord only, shall be utterly destroyed.

'You shall not wrong a stranger or oppress him', for you were strangers in the land of Egypt. You shall not afflict any widow or orphan" (Ex. 22:20-22). Now when the leaders and the lawyers started to oppress the people Jesus appears to fulfil the law by reinterpreting it and giving it the original meaning. He reinterprets it and makes it suitable to the messianic times. Thus, in the hands of Jesus law becomes an instrument that liberates people from the clutches of legalists. He declared that Sabbath is not for Sabbath's sake but for man (Mk. 2:28). The very mission of Jesus was to liberate people from all bondages.

The liberative acts of Jesus extend to all sections of people. First and foremost, he invites the Pharisees, the scribes, etc., to liberate themselves from the bondage of ignorance or pretence. "Jesus points out that literal observance of law neglecting its spirit is detrimental to life; in other words, an exclusive insistence upon the literal sense of the law is far from being life enhancing."[9] When he saw a large crowd following him and as he realized that they were without food, he ordered the disciples to feed them (Mk. 6:30-44). His liberative words and deeds proceeded from the single law of love in its two dimensions, vertical and horizontal: "... You shall love the Lord your God with all your heart, and with all your soul, and with all your mind. This is the great and first commandment. And a second is like it, you shall love your neighbour as yourself. On these two commandments depend all the law and the prophets" (Mt. 22:37-40; Jn. 13:34). St. Paul also would reiterate it, saying, "For you were called to freedom, brethren; only do not use your freedom as an opportunity for the flesh, but through love be servants of one another. For the whole law is fulfilled in one word, 'you shall love your neighbour as yourself'" (Gal. 5:13-14).

4. Marriage: Annulment Cases

In an attempt to see how the law can become oppressive or libeative, we shall explore certain specific issues in which law would defend, ensure, enforce, and protect the rights of individuals and societies.

The marriage nullity[10] cases and the procedures followed in the decision making provide the best examples to show that law exists in order

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[9]Thunduparampil, "Life and Law," 36.

[10]Antony Pinheiro, *Marriage in Latin and Oriental Canon Law*, Kalamassery: Jyothir Dharma Publications, 2006, 215: "Nullity of marriage is a permanent relief obtained in the case of an invalid marriage... Obviously, there does not exist a marriage bond between the partners. Hence, a declaration of nullity would free them

to help and liberate people and not to constrain or enslave them. For, due to any of the grounds prescribed in the Codes, if a marriage breaks down, Church takes sufficient care to see to it that such parties with grievances are properly helped. Let us examine the present legislation and see how the Codes of Canon Law deal with marriage cases.

Marriage that leads to the family life is one of the most fundamental institutions as far as human society is concerned. As God himself has established it, Church considers it a divine institution and hence it is most sacred to the church. Moreover, Jesus Christ has elevated it to a sacrament.[11] Marriage in the Catholic Church is considered a divine institution, established and confirmed by God himself by his laws (Gen. 1:27-28; 2:18-24). It is a sacramental as well as permanent union between a man and a woman joined in wedlock. It is through the institution of marriage, be it in religious or civil form, a man and a woman start living together as husband and wife and, thus, begin to establish a family that is the nucleus of the human society.

Law establishes, protects, and safeguards marriage. In all cultured societies there are some legal structures that enable a man and a woman to live and move around in society as husband and wife enjoying the rights and obligations of spouses. Unless they have this legal support and protection people will look at them with suspicion or even trouble them somehow, at least in the Indian context. Even among aboriginals there are some customs or long-standing practices that enable a man and woman to enjoy the freedom and dignity that are due to the status of married life. "In a pluralistic society, the public authority of the state can impose on the engaged [couple] a public ceremony through which they publicly profess their status as spouses. The state can furthermore make laws which regulate in a precise and correct manner the civil effects deriving from marriage, as well as rights and duties regarding the family."[12] So also in the Church, which greatly values the sacramentality of marriage, there are set norms and regulations that enable the married couples to enjoy the marital rights and obligations legitimately. The role of law in this context

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from marital rights and obligations and the parties would be free to enter a new marriage if he or she has no impediment or prohibition."

[11]CIC, c. 1055 §1 and c. 1134; CCEO, c. 776 §2; See also Pinheiro, *Marriage in Latin and Oriental Canon Law*, xv.

[12]Lawrence G. Wrenn, *Annulments*, Washington: Canon Law Society of America, 1996, 219.

is to ensure freedom and afford stability to the institution of marriage. By preventing many unwanted things law functions here as a liberative instrument.

Even though marriage is considered to be an irrevocable covenantal union or partnership based on personal consent between a man and a woman for "the whole of life" (CCEO, c. 776;[13] CIC, c. 1055), many marriages break down due to several insoluble reasons. At times, innocent young people suffer or even end their lives prematurely as a consequence of immature, imprudent, unsuitable, or incompatible marriage bonds. In the context of modern globalization and, especially in the Indian context, increased mobility either on account of study purposes or job-related matters, there take place many 'hectic marriages' which face difficulties and challenges later because of the lack of sufficient knowledge about the future life partner.

Here Church laws function as a means of liberation for the spouses or the candidates for marriage in two ways: 1) By facilitating the unmarried ones and 2) By helping the 'victims' of marriages. First by enacting norms, guidelines, or instructions that prevent the circumstances and situations leading to such incompatible unions, church laws come to the aid of matrimonial candidates. For example, the Codes prescribe that "before a marriage takes place, it must be established that nothing stands in the way of its valid and lawful celebration" (CIC, c. 1066 and CCEO, c. 785). Particular law of the Syro-Malabar Church, for example, requires that "those who have lived for more than one year outside the eparchy after reaching marriageable age, should produce a free state certificate" (Art. 163, §1). In the second paragraph of the same article, it is stipulated: "... he/she also shall make an affidavit regarding his or her 'free state' covering the period of his or her stay in other places." Thus, the authorities want to make sure that an aspirant for marriage has no previous marital bonds, scandalous cohabitation, or clandestine living together and the like that would later threaten the marriage. The parish priest of the original parish may not be aware of the things that happen in the place of his/her current residence. Therefore, a letter of the parish priest of the candidate's

[13] *Codex Canonum Ecclesiarum Orientalium*, Auctoritate Ioannis Pauli PP. II promulgatus, AAS 82 (1990), 1033-1353; for the English version see, Canon Law Society of America, *Code of Canons of the Eastern Churches* (Latin English Edition, New Translation), Washington, DC: Canon Law Society of America, 2001.

present residence certifying the "free state" of the candidate will avoid so many confusions or difficulties and evil effects that might occur later.

Again, CIC, c. 1069 and CCEO, c. 786 bind all the faithful thus: "Before the celebration of a marriage, all the faithful are bound to reveal to the parish priest or the local ordinary such impediments as they may know about." Particular law of the Syro-Malabar Church has concretized this common law stipulating as follows: "Banns are to be published on three Sundays or days of obligation during the sacred liturgy in the parish churches and if needed also in the filial churches of the parishes of the parties concerned..." (Part. Law, Art. 174). Ignorance regarding various aspects of marriage – biological, legal, sacramental – might also lead the candidates of marriage to unnecessary troubles and legal problems. Therefore, the Particular Law of the Syro-Malabar Church, for example, legislates thus: "Prior to betrothal the parties shall fill in the prenuptial enquiry form in front of their respective parish priests in order to make sure that they enter into marriage covenant with due preparations, knowledge and consent" (cc. 782-785; also see Part. Law, art. 160). According to the Law, "the local hierarchs shall see to it that in his eparchy marriage preparation courses are conducted and norms are set regarding the attendance at such courses" (Part. Law, art. 162, §2). These are a few of the precautionary measures that the Church provides lest anybody becomes a victim of illegal or invalid marriage bonds.

Secondly, the provisions of the law also aim at helping the married couples. What does the Church do in such cases? While the Church upholds the indissolubility and irrevocable nature of a sacramental marriage, she feels that on account of a marriage illegally or invalidly entered into, the life of either of the parties should not be damaged. The eparchial bishops constitute, therefore, marriage tribunals in all the eparchies, as far as possible, and prepare personnel to deal with broken marriage cases. Besides making provisions to prepare the couples well in advance of marriage (CCEO, c. 783; CIC, 1063, n.2), both the codes set apart a major portion of the code to come to the rescue of the injured party in a marriage bond, through legal provisions and procedures. Here, however, we should bear in mind that there is no concept of divorce in the Catholic Church.

Church, through her marriage tribunals, comes to the rescue of those who are already 'victims of invalid or illegal marriage bonds' with its norms and regulations that safeguard the right of different parties and mete

out justice to all. Of course, we come across with the question of divorce in the Mathew's Gospel (Mt. 19:3-9). The Pharisees ask Jesus: "Is it lawful to divorce one's wife for any cause?" Jesus' reply to the question reveals God's initial design regarding marriage and set aright a deviation caused due to the hard-heartedness of men. "For your hardness of heart Moses allowed you to divorce your wives, but from the beginning it was not so" (Mt. 19:8). Then, he reinterprets it or reforms placing it in the original spirit: "And I say to you: whoever divorces his wife, except for unchastity, and marries another, commits adultery" (v.9). "What, therefore, God has joined together, let not man put asunder" (v.6). Thus, he liberates them from their ignorance or presumptions. Jesus proves that he came not to abolish any law but to perfect or fulfil it (Mt. 5:17).

In spite of being a divine institution and a sacrament and despite having several legal safeguards, both in the ecclesiastical and civil realms,[14] several marriages break down due to "certain anomalies such as adultery, cruelty, desertion and virulent disease."[15] Especially in the modern world of globalization and migration, job opportunities and other circumstances are such that chances for the breakage of marriage are numerous. Canon law prescribes various other grounds such as impotency, lack of form, lack of due discretion, etc., which can lead up to the nullification of marriage.

What the marriage tribunals, however, do in this respect is to declare, after sufficient enquiry, study, and deliberation, those marriages which should not have taken place due to some impediments or grounds, null and void.[16] In effect, it means that such an apparently existing marriage bond, due to any one or more of the defects, has not sacramentally taken place and, subsequently, the party is free to find a life partner and establish a family. Thus, canon law functions as a liberative force in the case of married couples as well as candidates to marriage who, on account of any of the grounds prescribed in the code, suffer or might suffer unnecessarily. In such circumstances, "a relief by way of dissolution or nullity of

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[14]William E. Pinto, *Law of Marriage and Matrimonial Realities for Christians in India*, Bangalore: Theological Publications in India, 2000, 48.

[15]Pinto, *Law of Marriage and Matrimonial Realities*, 48.

[16]Pinheiro, *Marriage in Latin and Oriental Canon Law*, 215: "A judicial declaration of nullity is the recognition made by an ecclesiastical tribunal in a judicial sentence which is ratified by another ecclesiastical tribunal of higher grade, that it has been proved with moral certitude that, when the marriage was contracted, a cause of nullity was present."

marriage was inevitable. What is contended is that the relief sought is not to punish the guilty party but to protect the innocent party."[17] Thus, with legal prescriptions Church comes to the aid of stressed couples and liberate them from the yoke of an unjust or unsuitable life partner and through ecclesiastical judicial judgment enables them to enter into a new marriage.

5. Freedom of Expression

Freedom of speech is a fundamental constitutional right as far as any citizen is concerned. It is not different in the ecclesial community also. Both the Codes of Canon Law of the Catholic Church legislate, thus, with regard to the freedom of expression: "Those who are engaged in the fields of sacred study have a just freedom to research matters in which they are experts and to express themselves prudently concerning them, with due allegiance to the *magisterium* of the Church". (CIC c. 218). Its corresponding canon in CCEO, c. 21 reads as follows: "Those who are engaged in the sacred sciences have a just freedom of inquiry and of expressing their opinion prudently on matters in which they possess expertise, while observing the submission due to the *magisterium* of the Church."

It is to be noted here that the Christian freedom is always a 'freed freedom'. Therefore, it is neither an absolute provision nor a license to do anything and everything according to one's own whims and fancies. That is why both the codes include the expression that it is "just freedom." While speaking about the laypersons and their rights, CCEO, c. 402 makes the following provision: "Lay persons have the right to have recognized that freedom in the affairs of the earthly city that belongs to all citizens. In exercising this freedom, however, they are to take care that their actions are imbued with the spirit of the gospel and are to take into account the doctrine set forth by the *magisterium* of the church; but they are to avoid proposing their own judgment as the doctrine of the church in questions which are open to various opinions."[18]

The question whether law is liberative or restrictive is relevant here. If we imbibe the true spirit of the legislator, we will have to say that it is both. Because while endorsing juridically and legally establishing the freedom of expression, it also at the same time stipulates that it is only a "just freedom." Why? We speak of the freedom of expression remaining

[17]Pinto, *Law of Marriage and Matrimonial Realities*, 48.
[18]See also AA 6; LG 35 and 4.

within the framework of an organizational structure and a belief system. One has, therefore, to exercise the freedom responsibly. That is, those researchers have to observe *obsequium* or be submissive to the teachings of the *magisterium*. Therefore, it is a healthy restriction and not something negative and, at the same time, it is an empowering freedom aimed at the doctrinal progress and "edification of the community of faith and cooperation with the bishops resourcefully in the discharge of their teaching function" (CCEO, c. 606 §2). It is very well explained in the code: "It is for theologians, given their profound understanding of the mystery of salvation and their expertise in the sacred and related sciences as well as in current questions, to explain and defend the faith of the church and to pave the way for doctrinal progress, while faithfully submitting to the authentic *magisterium* of the Church and at the same time availing themselves of proper freedom" (CCEO, c. 606 §1). Through these positive legal support, strength, and promotion of research and expression, the people or subjects of these laws are encouraged to engage more freely in the affairs of the church and, thus, employ their "knowledge, competence and position" (see CCEO, c. 15 §3) for the growth and expansion of the church as well as the edification of the faithful. Such a kind of freedom and corresponding restrictive measures liberate the faithful, including the clergy and all those engaged in teaching and preaching ministry, from committing heresy and apostasy and liberate the Church from spreading wrong principles. Law also sanctions those who violate these norms (see CCEO, cc. 1436-1437).

6. Liberative Dimension of the Penal Laws in the Church

In comparison with the earlier laws of the Church the present body of canon laws (*corpus iuris canonici*), in general, has reduced the automatic punishments (*latae sententiae*) to the minimum. The concept of *latae sententiae* is, however, foreign to the Code of Canon Law for the Eastern Churches.

Whereas one of the guidelines given to the committee for the formulation of the Latin Code stipulates that the punishments "imposed by the law itself are to be reduced to the minimum,"[19] that which were given to the committee for the formation of the Eastern Code say that "all automatic [*latae sententiae* against *ferendae sententiae*] penalties should

[19] *Communicationes* 1 (1969), 101.

be eliminated in the eastern code."[20] This shows the concern of the legislator to liberate people from rigid or even unjust application/imposition of law and its consequences in the concrete lives of the people. The guidelines stress the point that "the attempt should at least be made to envisage the possibility of introducing into the penalties also a positive element which would better correspond to their medicinal character – the character, that is, which is practically the only that the Christian East acknowledges in canonical punishments."[21] Greater emphasis is, thus, given to the canonical admonition prior to the imposition of a penalty. A canonical penalty should not be considered only in terms of a deprivation of a good, but in accord with Eastern tradition, the imposition of positive acts (penances) should also be considered. If a finger or another limb of the human body is cut and wounded we dress and redress it until it gets healed. So is the case with canonical penalties in the church, especially in the oriental spirit. Medicinal character is well reflected there. Instead of finishing one off with an automatic punishment, the eastern spirit tries to heal the person with an admonition or with positive acts of penances prior to punishment. Besides this, the code prescribes that the delict should be given time and opportunity to express or defend himself/herself before the judgment being passed on him. CCEO, c.1469 §3 states: "Before making any decision in the matter, the hierarch is to hear the accused..." With regard to the extra-judicial decree CCEO, c. 1486 §1 says: "The accused be notified of the accusation as well as the proofs and be given the opportunity of fully exercising the right of self-defence, unless the accused neglected to appear after being cited in accord with the norm of law."

CCEO, c. 24 stipulates: "The Christian faithful can legitimately vindicate and defend the rights which they have in the church in the competent ecclesiastical forum according to the norm of law." Thus, in the Eastern Code, the medicinal nature of the penal law is emphasized. It is also clear from the cases of marriage annulment process. The whole process is concentrated not on punishing the harming spouse, instead it is interested in liberating the injured party.

The same canon in the next paragraph prescribes that the accused always should get justice according to law and, then, recommends that the

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[20] *Nuntia*, 3 (1976), 24.
[21] *Nuntia*, 3 (1976), 24.

law should be applied with the principle of equity. That is, the mind of the legislator is not to destroy the accused, but to strengthen, liberate, and save him/her through these legal procedures or legal safeguards. CCEO, c. 24 §2: "Further, if they are summoned to a trial by the competent authority the Christian faithful also have the right to be judged according to the prescripts of the law, to be applied with equity." The mind of the legislator is that even when punished, the accused should be duly respected. "The members of the Commission sought not only to avoid anything that would contradict Vatican II, but to be most faithful to the mandates and spirit of the Council. Consequently, penal law should be restricted to the external forum, marked in a special way by Christian mercy, and a pastoral spirit so that every effort should be made so that sanctions would never harm those punished and penalties always respect the personal dignity and rights of those punished."[22]

Pope John Paul II places law in the proper context of protecting fundamental human rights:

> In the vision of a church which protects the rights of the individual faithful, but likewise promotes and protects the common good as an indispensable condition for the integral development of the human and Christian person, she also positively includes penal discipline. Even the penalty that is threatened by ecclesiastical authority – although in reality it is simply a recognition of a situation in which the subject has put himself or herself – is seen as a means of fostering communion, that is, as a means of repairing those deficiencies in the individual good and the common good that have come to light in the anti-ecclesial, criminal, and scandalous behaviour of the members of the People of God.[23]

The law that punishes the errant members of the church "flow from its nature as a visible community or society, and the consequent necessity to recall sinners to their Christian duty and repentance; to protect the innocent faithful from bad example and behaviour disruptive of ecclesial communion; to promote the unity of faith; and to deter the weak from

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[22]*Communicationes*, 2 (1970), 101. See also William H. Woestman, *Ecclesiastical Sanctions and Penal Process*, Bangalore: Theological Publications in India, 200, 3.

[23]John Paul II, *Allocution to the Roman Rota*, Feb. 17, 1979 in AAS 71 (1971), 422-427. The translation is from Woestman, *Ecclesiastical Sanctions and Penal Process*, 5.

being led astray."[24] The council of Trent in its 24th session states as follows regarding salvific and liberative nature of penal law through constraining norms: "The Apostle warns (1 Tim. 5:20) that public sinners should be openly rebuked. When, therefore, someone commits a crime publicly and in the view of many, by which others are offended and scandalized and disturbed, then without a doubt a fitting penance for the crime in question should be publicly imposed on such a person, that one who has incited others to evil by example, should recall them to an upright life by the evidence of the person's penance."[25] Thus, punishment in the church is aimed at bringing back the delict and, hence, the medicinal nature of the law is upheld.

7. Conclusion

Laws, rules, norms, regulations, restrictions, control, limitation, boundary, and the like are words that majority of the human beings do not like. Generally speaking, they are considered to be negative concepts. In the foregoing pages we have been trying to see that laws and other similar words do have a restrictive, restraining dimension. However, compared to the beauty and values these laws stand for or support, promote, and protect, the restrictive aspect is having less weight. This could be well comprehended with the example of a road traffic junction where there is neither a signal light nor a traffic police to control the traffic. Laws, in the Church also, serve as a means or a specific instrument that liberates the people, and even institutions, from several enslaving situations and evils in two ways. Firstly, by stipulating conducive norms and regulations, positive directions, and suggestions that help the faithful to avoid the creation of unnecessary troubles to themselves and to others and, secondly, by enacting reliable procedural norms and legal sanctions of rather medicinal nature aimed at liberating and bringing back the errant.

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[24]Woestman, *Ecclesiastical Sanctions and Penal Process*, 7.

[25]Trent, Sess. 24, c. 8. See also Woestman, *Ecclesiastical Sanctions and Penal Process*, 8.

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Reflection

JUSTICE WEDDED TO MERCY

Law and Religion Paving the Way to Freedom

Benny Joseph♦

The end of law and religion is nothing but justice, but justice qualified by mercy. It is, perhaps, the way to freedom and it is in this sense law and religion become forces of freedom. Before we go into the conglomeration of justice and mercy, it is good to know the term justice in all its nuances. Ever since men have begun to reflect upon their relation with each other and upon the vicissitudes of human lot, they have been pre-occupied with the meaning of justice. There have been several terms and explanations offered to clarify justice but nothing seems to convey it in its fullest sense. Among all these, even today, the most endearing is that of Aristotle's – "giving each man his due." But justice is not just doing right; it consists in a certain moral disposition or state of character. A firm and perennial disposition is the moral attitude, or habit without which justice cannot manifest itself. It is not merely a matter of facile intuition, but an intuition ripened by experience or an intuition constantly and perseveringly cultivated.

This view of justice is similar to the Beatitude: "Blessed are they who do hunger and thirst after righteousness." Justice, then, is equated with righteousness – not merely a human but a divine perfection. This is, again, akin to the Hebrew concept of God revealed in the Old Testament, for the Psalmist says: "Justice and judgment are the habitation of thy throne." The end of the Law that was handed over to the Israelites through Moses was to lead people into righteousness.

Another important aspect of justice is its social reference. It is a social virtue. It is social because it arises out of, and expresses itself in, obligation towards others – giving the other what is his/her due. This was one of the reasons why Aristotle placed justice in the forefront of all moral goodness – because it is exercised not for one's own sake but for another's benefit. When two or three meet together, when nations come together this

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question of justice arises. Is justice, then, an altruistic virtue? Is the exercise of a moral principle "towards another" necessarily altruistic? To these questions some would say that the altruistic nature of justice come from the fear of suffering injustice. This, then, leads us to the reciprocal nature of justice. Assuming that man is a political animal, the sense of justice and injustice becomes a necessary and fundamental attitude of consciousness. This, in simple terms, means that man's existence makes him aware of his own claims on life and an equal claim on life by others which, in fact, lead to a constant need of adjustment. This realization becomes an integral part of his intellectual and moral being. This adjustment is nothing but the reciprocity of justice – a give and take process. In this give and take process, law and religion act as guides. Law ensures that this give and take is smoothly worked out and religion tries to make one to grow from egoism to otherness. This concept of otherness of justice is what Immanuel Kant envisaged when he defines Republic as "a social community of being, each of which is reciprocally end and means to the other."

The function of justice is to maintain or restore equilibrium in human affairs. What we see in society in terms of events, chances, characters, aptitudes, possessions, aspirations, claims – all the innate attributes of human personality – are, in the way of nature, unequal. In order to make co-existence amidst all these inequalities, some regulative is necessary, that is, to preserve the measure of balance. But to attain this equilibrium, unfortunately, we do not have any common denominator. It is here the role of religion becomes prominent. By religion what is meant here is not the institutionalized religion, but the religious sense which resides in each man and which propels one to be just. This religious sense helps men to see the light of reason in the imperfect codified laws and men see this light strangely in different ways. In common legal parlance, this light of reason is nothing but the legislative intent of enacted laws. When this light of reason, given by the religious sense of men, is shed upon manmade laws; laws become the idea under which each man's power of action can exist in harmony with the power of action of others. This can pave the way to freedom, that is, a way to co-exist amidst all the realities of human inequalities. It is this religious sense that helps the practice of 'justice-according to law' possible and then the dream of equality before law and equal treatment before law is realized.

Now, let us take this debate a little further: whether this equilibrium that justice tries to bring in really leads one to freedom? Indeed, it is a

pestering question that is to be answered. This doubt creeps in, because there are occasions when this equilibrium seems remote; or what one notices in real life is inequality everywhere and the equilibrium dreamt is in doll-drums. Man, being weak in mind and body, in whatever way he tries to be religious, he often feels that justice has not been done to him. Here one is prompted to think, whether justice in the strict sense is enough to lead one to freedom. The answer, perhaps, is not. Justice has to be modified with mercy. Mercy has always stood as high in the moral scale as justice – indeed even higher. Aristotle himself placed greater value on equity than on strict justice. Even in the Old Testament, where justice wears a stern, not to say vengeful aspect, we read: "What does the Lord require of thee, but to do justly, and to love mercy, and to walk humbly with thy God." So it is clear that justice has to be wedded to mercy and this mercy includes patience to be heard. It is one of the earliest precepts of civilized jurisprudence and the basis of the fundamental rule of natural justice that "*Audi Alteram Partem*," which means "to hear the other party." This maxim of natural justice simply means that the deciding officer should have the patience to hear the party and should not venture to any punishment without the accused being heard. As observed by Fortescue J., "the laws of God and man, both give the party an opportunity to make his defence, if any." The first and best example for this patience is found in the Garden of Eden where our first parents sinned against God. God did not straight away order an expulsion from the Garden rather he took patience to hear what Adam and Eve had to say in defence of themselves. This episode also confirms that it is not strict justice that God demands but justice tinged with mercy which invariably involves the patience to hear. When it is not strict justice that God wants, how can we conclude that justice alone can lead us to freedom?

In the New Testament, this concept of justice wedded to mercy is more clearly exposed. There are several remarkable instances which seem to show that Christ declined any office of earthly justice simply because it was not guided by mercy and he believed that true justice lay with his Father and that justice is not strict justice but justice wedded to mercy. The best example is the woman caught in adultery. Strict justice by the laws of Moses demanded to stone her to death. The Lord, however, gave a new nuance to this justice by colouring it with mercy. It seems here that justice seems to receive less than its due. In the parable of the labourers in the vineyard, was it just that the last should be the first and first last? Did not

Martha have a reasonable cause to complain that she had received less than justice? Again, it is impossible not to feel some sympathy with the elder brother in the parable of the prodigal son, who had justice on his side when he complained that demerits had the advantage over merit. In all these situations, the Lord has only one answer – the Justice of his Heavenly Father – a justice in which love and mercy dominate, a love which asks to forego one's own right, a mercy which compels the Good Samaritan to tarry a longer for the sake of the wounded. So, justice in the eyes of the Lord is one step ahead.

How can this concept of justice wedded to mercy be put into practice in the day-to-day application of civil and criminal laws? According to Aristotle, "the law has to deal in generalities and cannot foresee any particular case which may demand some relaxation of an otherwise salutary rule." This amounts to the exercise of the faculty called 'discretion'. But very often this 'discretion' degenerates into caprice. The exercise of discretion must come from one who demands justice. In Shakespeare's play, *The Merchant of Venice*, we have the beautiful exposition of this discretion. Strict justice allows Shylock to have a pound of flesh from the breast of Antonio. Here Portia steps in with the plea of mercy:

> Though justice be thy plea, consider this
> That in the cause of justice, none of us
> Should see salvation: we do pray for mercy
> And that same prayer should teach us all to render
> The deeds of mercy.

The justice that Shylock demands is not salvific and when it is not salvific, it cannot be liberative. It is only justice wedded to mercy that can lead both Shylock and Antonio to salvation or to liberation. The plea here is to forsake one's interest so that the other may have life. For this kind of a liberative justice, a liberal interpretation of the law is required; an interpretation which confirms the fact that law is for man and not man for law. It is justice that demands the travel of an extra mile when only one mile is asked for, or it is the readiness to offer one's coat too when only one's shirt is requested for. When this type of a concept of justice wedded to mercy is materialized, justice is not just giving the other his due, rather it is giving more than his/her due. It is only in this understanding of justice that one can attain freedom of the children of God – a blissful state of mind, an emancipated state of existence.

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Survey

NYAYA PANCHAYAT
Towards Speedy and Easy Justice

Davis Panadan♦

1. Introduction

India, being a country of the ancient civilizations in the world, possesses a valuable heritage in the field of administration of justice. India's rich cultural heritage in the field of administration of justice and the need to bring those institutions in the form of *Nyaya Panchayat* (village courts) institution and the common people should be brought to limelight, especially against the present practices of time consuming, costly, extravagant and expensive paraphernalia that involve in the administration of justice. In this context, new structures, procedures and organization of new *Nyaya Panchayats* need to be in place. India's massive attempt to provide access to justice for hundreds of millions of villagers through promotion of *Nyaya Panchayat* is theoretically provocative as well as of practical import.

Administration of justice was, according to the *Smritis*, one of the most important and obligatory functions of a king. The *Smritis* stressed that the very object with which the institution of 'kingship' was conceived and brought into existence was for the enforcement of *dharma* by the use of the might of the king (State) and also to punish individuals for contravention of *dharma* and to give protection and relief to those who were subjected to injury and in whose favour *dharma* (law) lay.[1] Ancient Indian jurists bestowed great attention in evolving the law governing administration of justice.[2]

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[1]Rama Jois, *Legal and Constitutional History of India*, Bombay: Tripathi, 1990, 1:489.

[2]Varadachariar, *The Hindu Judicial System*, Nagpur: Wadhwa Sales Corporation, 1946, 258.

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2. *Nyaya Panchayat* in Ancient India

Nyaya Panchayat was the prestigious institutions of ancient India to impart speedy and easy justice to the people. Model and structure of village courts and administration of justice in India were designed along this line. The *Smritis* greatly emphasized that it was the responsibility of the king to protect the people through proper and impartial administration of justice and that alone could bring peace and prosperity to the king as well as to the people.[3] The noble role of judges in the administration of justice as laid down in the *Smritis* and the requirement of fearlessness, impartiality and independence on their part, even if their decisions are against the wishes of the king, are of great value and a source of inspiration to us. The law received its sanction from the faith of the people and the king in *dharma.* Thus, the *Smritis* had laid down a firm foundation for an independent judiciary to ensure *dharmic* supremacy where the king was the head of the State under the monarchic system. The king was also warned of the consequence of having meek judges who would give opinion to his liking. This principle holds good even in a democratic set up based on constitutional supremacy, as it implies that if judges give opinion contrary to law, to suit the wishes of the persons in power, it is not only bound to denigrate the judiciary, but the persons in power also would incur the displeasure of the people. In the ultimate analysis, concepts of *dharma* and natural law have not only a role to play in the enacting of laws in the most modern democratic systems but also throw light upon and guide the interpretation and enforcement of the laws enacted in order to secure justice to the individuals concerned. The same was the position under the ancient Indian practice of *rajadharma.* The supremacy of *dharma* was declared thus: "Law is the king of kings; nothing is superior to law; the law aided by the power of the king enables the weak to prevail over the strong."[4] The above said verse, not only declares the supremacy of Law but also the principle of Rule of Law which aspect shall be highlighted under the head. *Dharma* was the ultimate authority and the authority of king was only penultimate. It is no doubt true that there was no forum before which any violation of *rajadharma* by the king could be questioned. The king himself constituted the highest court, but he was required to give his decision in conformity with the views of the judges of the court, who were required to give their opinion without fear or favour. It

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[3] Jois, *Legal and Constitutional History of India*, 1:489.

[4] *Brihadaranyaka Upanishad* 1.4.14.

was the firm view of ancient Indian thinkers that *dharma* without *rajadharma* for its enforcement would only be an illusion. Therefore, *rajadharma* was regarded as paramount *dharma*.

After making a detailed survey of the ancient Indian judicial system and the historical evidence available, Sir S. Varadachariar concludes: "Whenever and wherever and so far as circumstances permitted, attempts were all along being made in Hindu India to administer justice broadly on the lines indicated in the law books."[5] The elaborate provisions for different grades of courts made in the article are indicative of a fairly well developed system of administration of justice in the ancient Indian judicial system.

In fact, *Smritis* recognized the following people's courts and administration of justice.

2.1. Gradation of Courts

The court presided over by the king was the highest court. There were other courts, some of them appointed by the king and the others which were people's courts, recognized by the *Smritis* as having the power to administer justice. *Katyayana Smriti* 82 gives the grades of courts in the following way: *Kula* (gatherings of impartial persons of the family or caste of the litigants),[6] *Shreni* (corporation of persons of the same craft, profession or trade), *Gana* (assembly of persons belonging to one place but to different caste), and *Adhikrita* (court appointed by the king), *Nripa* (king himself).[7] These are the administrative courts. These are invested with the power to decide cases. Among these each of the courts mentioned later is superior to the one mentioned earlier. *Brihaspati Smriti* 281:29 states about the appellate jurisdiction as follows:

> A *Shreni* can review the decision of a *Kula*, and a *Gana* has the power to review the decision of a *Shreni*. Judges have power to review the decisions of a *Gana*, and the king is the highest court of appeal and his decision is final.[8]

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[5]14th Law Commission Report, 1:26.

[6]Gharpure, ed., *Smiriti Chandrika of Devanna Bhatta*, Bombay: Tripati, 1950, 32-33.

[7]Gharpure, ed., *Smiriti Chandrika of Devanna Bhatta*, 32-33.

[8]Gharpure, ed., *Smiriti Chandrika of Devanna Bhatta*, 37.

Further, *Katyayana Smriti* 496 says: "If a party was not satisfied with a decision given by any court or tribunal, including a *Kula*, the king should reconsider that decision in case he felt that it was wrongly decided.[9]

The above provision recognized the prerogative of the sovereign, i.e., the king, to function as the highest court of his kingdom. A party could approach the king for a review of the decision given by any tribunal such as a *Kula*, a *Gana*, a *Shreni* or such other courts. This part of the sovereign power is comparable to the power conferred on the Supreme Court under Article 136 of the Constitution of India.

Brihaspati Smriti 277:2-3 divides the courts in the following way: *Pratistitha* is a court which is established at a particular village or town, *Apratistitha* is a mobile court, moving from village to village, *Mudrita* is a court appointed by the king and authorized to use the royal seal, *Sasita* is the court over which the king himself presided.[10] These are the judicial courts. These courts would decide disputes in accordance with the customs or usage of the locality, caste, trade or family. Only the royal courts could execute severe punishments. These lesser courts could pronounce decrees and invoke Royal power to enforce them. It is clear indication of separation of powers which is basis of a constitutional government.

2.2. Qualifications of Chief Justice (*Pradvivaka*) and Other Judges

Katyayana Smriti 69 gives the meaning of the designation: "The meaning of *Pradvivaka* (Chief Justice) is given below: In a dispute between two parties, one who puts questions (*Prat*) and distinguishes right from wrong (*Vivaka*) is called *Pradvivaka*."[11] Again, *Narada Smriti* 43 speaks of the qualification of the chief justice as follows:

> A person who is well versed in the eighteen titles of law and their eight thousand subdivisions, and who is proficient in logic (*Tarka*), interpretation (*Mimamsa*) and other relevant subjects, who is master of the *Vedas* and *Smritis*, who has the capacity to extract the truth from the judicial proceedings by application of the law, should be appointed as the Chief Justice.[12]

Narada Smriti 36:4-5 says about the qualification of other judges:

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[9]Jois, *Legal and Constitutional History of India*, 1:492.

[10]Gharpure, ed., *Smiriti Chandrika of Devanna Bhatta*, 32-33.

[11]Jois, *Legal and Constitutional History of India*, 1:494.

[12]Lakshman Sastri Joshi, ed., *Dharmakosa*, Nagpur: Wadhwa Sales Corporation, 1946, 1:43.

> Let the king appoint, as members of the Court of Justice, honourable men of tried integrity (*Sabhyas*) who are able to bear the burden of the administration of justice and who are well versed in the sacred laws, rules of prudence, who are noble and impartial towards friends or foes.[13]

It adds that the king who is the fountainhead of justice has to depend on the judges and, therefore, he should have reliable and worthy men in that position. In *Rajadharma*, the king is advised to appoint suitable judges, indicating therein the qualities of a person to be a judge. Moreover, *Katyayana Smriti* (63-67) lists the qualification of judges:

> A person who is well versed in *Vyavahara* (laws regulating judicial proceedings) and *Dharma* (law on all topics), a *Bahushruta* (profound scholar), a *Pramanajna* (well versed in the law of evidence), *Nyayasastravalambinah* (law abiding), and has fully studied the *Vedas* and *Tarka* (logic) should be appointed to carry on the administration of justice.[14]

2.3. Dispensation of Justice: The Highest Dharma of Judges

All the *Dharmasastras* and *Manusmriti* (VIII, 12-14) with one voice laid down that dispensation of justice was the highest *dharma* of judges:

> In a case where *dharma* (justice) has been injured or made to suffer at the hands of *adharma* (injustice) and still the judges fail to remove the injustice, such judges are sure to suffer for their act (or omission) which is *adharma*. Where *dharma* (justice) is sought to be destroyed by *adharma* (injustice), and truth is sought to be destroyed by untruth, and the judges fail to prevent the same but remain mere spectators, they are sure to be destroyed.[15]

2.4. Judges Must Be Impartial, Independent and Fearless

Katyayana Smriti (74-77) speaks of the impartiality and independence of the judges in the following way:

> The members of a court should not connive with the king when he begins to act unjustly. If they do so, they, along with the king, fall head down into hell. Judges who agree with the king when he proceeds in an unjust manner become parties to the sin flowing from

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[13] Jois, *Legal and Constitutional History of India*, 1:494.
[14] Jois, *Legal and Constitutional History of India*, 1:494.
[15] Jois, *Legal and Constitutional History of India*, 1:496.

> such unjust decision. They may, therefore, mollify the king by speaking at first what is agreeable to him and by persuasion gradually bring him round to the right path. When the king directs a judge to give an unjust decision in a case, the judge should beseech the king against the order which will lead to injustice, and dissuade him from wrong doing. A judge should give his decision only in accordance with law and justice. If the king disregards that decision, the judge incurs no sin.[16]

2.5. King Not to Be Angry with Judges for Giving Frank Opinion

Katyayana Smriti (12-13) say about judges' fearlessness in imparting justice:

> The king should never be angry towards his ministers, judges and physicians, when they express their frank opinion, since they are expected to tell what is proper and correct and not what is just agreeable to him. In a kingdom where the ministers, judges and physicians are made to give opinions according to the wishes of the king, the king will soon be deprived of his kingdom and happiness because of his disregarding *dharma*.[17]

2.6. Judges Should Remove Inequity

Narada Smriti (39:16) says: "As an experienced surgeon extracts a dart from the body of a person by means of surgical instruments, even so the Chief Justice must extract the dart of inequity from a law suit."[18] Asahaya explains this provision thus:

> As a skilful surgeon, conversant with the art of extracting a dart, takes it out by the application of surgical instruments, spells and other manifold artful practices, even though it may be difficult to get at, it being invisible, even so a judge shall extract the dart of inequity which has entered a law suit, by employing the artful expedients of judicial investigation.[19]

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[16]Jois, *Legal and Constitutional History of India*, 1:496.

[17]Jois, *Legal and Constitutional History of India*, 1:497.

[18]Joshi, ed., *Dharmakosa*, 1:48.

[19]Ramasastri, ed., *Naradasmriti*, Nagpur: Wadhwa Sales Corporation, 1946, 33-39.

2.7. Unanimous Decision Recommended

Narada Smriti (40:17) insists that the unanimous decision is to be preferred:

> Unanimous decision by all the judges leaves no room for doubt while a majority decision leaves doubt in the minds of litigants. When there is no unanimity among the judges, opinion of the majority of *Sabhyas* (Judges) should prevail.[20]

2.8. Assistance by Learned Scholars (*Amicus Curiae*)

Narada Smriti (36:2) states: "Whether authorized or not, a person acquainted with law shall give his opinion. The word of a person who acts in accordance with the dictates of law is divine."[21] This is a very important rule which enables the king or judge to take the assistance of a person well versed in law, and is comparable to the appointment of *amicus curiae* by the courts, prevalent under the present system.

3. Presence of *Nyaya Panchayat* during 1900-1947 (Pre-Independence Period)

The development of village government from 1900-1947 consisted primarily of the creation of *panchayat* bodies blending municipal/ administrative and judicial functions. Judicial functions, however, seem pre-eminent in the available accounts of the *panchayat* institutions. During this period, these functions were performed by special village courts. The personnel of these village courts were elected by villagers though in some cases there were indirect election and nomination.

Under United Provinces Act 1920, the principal function of the *panchayat* was to act as a petty court. Judicial functions were pre-eminent in the ordinary *panchayats* of Central Provinces, Punjab and the 'Union Courts' in Bengal and 'Village Courts' in Madras. In United Provinces in 1925, the *panchayat* disposed 122,760 cases (two thirds being civil cases).

4. Constitution-Making Period and *Nyaya Panchayat*

The draft Constitution of India did not contain any reference to *Nyaya Panchayat* and was subjected to the criticism that "no part of it represents the ancient polity of India."[22] B. R. Ambedkar was the person who caused this omission. I quote his words here: "I hold that those village republics

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[20]Joshi, ed., *Dharmakosa*, 1:48.
[21]Joshi, ed., *Dharmakosa*, 1:44.
[22]*Constituent Assembly Debates*, 7:549-550.

have been a ruination of India... What is a village, but a sink of localism, a den of ignorance, narrow-mindedness and communalism?"[23]

Gandhi, however, had another dream of an ideal village *swaraj* (self rule). The *panchayat* will be legislative, judiciary and executive combined, a perfect democracy based upon individual freedom. The individual is the architect of his own government. He and his village are able to defy the might of a world.

5. Formation of *Nyaya Panchayat* in the Constitution Era

While Article 40 of our Constitution enjoins the state to organize village *panchyats*, Article 50 directs states to take steps to separate the judiciary from the executive. This impulse led to the creation of *Nyaya Panchayat* in states which do not have such bodies.

The purposes of the *Nyaya Panchayat* are, (1) to provide easy legal access to the village population, and (2) to represent a massive attempt by the state to displace the existing dispute processing institutions in village areas with territorially based secular institutions or special dispute processing institutions.

Nyaya Panchayats are established for a group of villages (7 to 10 villages). Each *Nyaya Panchayat* has a chairman and secretary elected by its members (by *Grama Panchayat* members). One-third of its members retire every second year. A member must be able to read and write the state language and must not hold an office of *Sarpanch* or member in the *panchayat*. In different states there was a little difference in the mode of election. In the United Provinces, *panchayat* members nominate a person among themselves to *Nyaya Panchayat*. In Bihar, four members are directly elected and four from *Grama Panchayat* members are elected. In Kerala, the system followed was complete nomination. Under Union Territory of Delhi, direct election system existed.

The jurisdiction of *Nyaya Panchayat* was both civil which is limited and criminal which is extensive. The civil jurisdiction is normally confused to pecuniary claim of value Rs. 100 and by agreement of parties it can be raised to Rs. 200 or more. Civil jurisdiction in some states extends to the recovery of minimum wages or arrears for maintenance. The criminal jurisdiction covers most of the offences under Indian Penal Code as well as the Special Statutes like Cattle Trespass Act. It varies from state

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[23]*Constituent Assembly Debates*, 6:55.

to state. There was no power to sentence offenders to imprisonment, but to levy fine. The emphasis was on the amicable settlement of dispute.

The essential features of the organization of *Nyaya Panchayat* were (1) simplicity of procedures and (2) flexibility of functioning. The complaints may be made orally or in writing and no legal representation is allowed. In some civil matters parties may be represented by an agent. The parties are heard in a fairly informal manner. They arrive at a decision which is pronounced in the open court. Minor court fees were levied (that is, 50 paisa). *Nyaya Panchayats* have power to issue summons, not warrants, and to proceed *exparte*. They will have the power to levy execution through attachment orders if the decrees are unfulfilled. The judgements are written and maintained as part of official records. The higher judiciary has powers of control and oversight. The Sub-divisional or District magistrate can transfer a case from one *Nyaya Panchayat* to another when there is chance for miscarriage of justice.

It is a fact that, by 1980, *Nyaya Panchayats* have disappeared from almost all the states. The reasons were the following: (a) *Sarpanchas'* opposition to the rise of parallel powerful institution in the form of *Nyaya Panchayat*, (b) *Nyaya Panchayats* are operating within the context of the *panchayat* system without being an integral part of it, (c) *Nyaya Panchayats* were neither magistrates, nor are they adjudicated in the traditional sense, (d) lack of minimum training of the *panchas* in the law they are to administer, (e) lack of quorum in many instances, (f) they are not elders of caste in *panchayats* and they do not necessarily enjoy a reputation for integrity and wisdom, nor are they necessarily members of dominant *jatis*, (g) since members were always nominees of *Sarpanchas*, the system became the centre of favouritism, (h) members were not paid well, and (j) execution of the sanction always was at the mercy of the state law.

6. The Necessity of Reviving *Nyaya Panchayat*

Nyaya Panchayat as an institution capable of administering speedy and easy justice to the people must be revived in India today. In order to make it more effective, I suggest new constitution, jurisdiction and organization for the *Nyaya Panchayat*, which will surely be a source of insights for parliamentarians of our country when they discuss "New *Nyaya Gramalaya* Bill 2007" in the parliamentary session.

6.1. Constitution and Composition of the New *Nyaya Panchayat*

Nyaya Panchayat is established for a village. According to a recent report, there are nearly 600,000 villages in India. The members of the *Nyaya Panchayat* should be judges. Three judges are to be appointed in each village. A peon is appointed to help the judges and to keep records. The prospective judges receive an education designed to prepare them for their professional responsibilities in the judicial academies and upon passing LLB with first class and an aptitude test conducted by Union Public Service Commission of India (UPSC), they are made judges and assigned to each *Nyaya Panchayat*. In France, as in other civil law systems, judges are not selected from the ranks of practicing attorneys. They should not be allowed to be polluted by bar practices in the country. The lawyers elevated to the bench have often had specialized legal practices which will be harmful to the justice delivery system of our country. The appointment will be by each state government from the list published by UPSC. As a whole, I suggest a career judiciary. It should be a mobile court. In every ward of each village there should be one small room and separate building in each village head quarters for the function of the court.

6.2. Jurisdiction of the New *Nyaya Panchayat*

New *Nyaya Panchayat* should have both civil and criminal jurisdiction as the former *Nyaya Panchayat*. The civil jurisdiction is normally confined to pecuniary claim of Rs. 100,000 and by agreement of the parties the amount could be increased. The civil jurisdiction also extends to the recovery of minimum wages or arrears of maintenance, Dowry Prohibition Act, Bonded Labour Abolition Act, Family Court Act, Consumer Protection Act, etc. The criminal jurisdiction should cover most of the offenders under Indian Penal Code. It should have power to levy fine, though without any power to impose imprisonment. The emphasis is on the amicable settlement of disputes. Since delay and limitation in justice delivery system defeat equity, the maximum time limit given to judges to settle a dispute will be 60 days. The concept of limitation period is not applicable here and so cases cannot be dismissed for the expiry of the limitation period.

6.3. Organisation of the New *Nyaya Panchayat*

The main drawback of Indian judicial system is that it destroys substance by giving importance to procedures. So, the basic features of the new system should be simplicity of procedures and flexibility of functioning.

The complaint can be made by orally or in writing. Since lawyers apparently lack concern for justice and, therefore, they may use their legal expertise to advance their own interests, no legal practitioners shall be permitted to appear on behalf of any party in any proceeding before the *Nyaya Panchayat*. It will be nice to remember the word of William Shakespeare here: "The first thing we do, let's kill the lawyers."[24] But a party to a proceeding may in writing authorize any person, not being a legal practitioner, to appear and plead for him. The unanimous decision of the three judges shall be mandatory. For, very rarely the collective wisdom, knowledge, and experience of the three learned judges may go wrong. The 'Collegiate Court' in France prohibits any further appeal to the higher courts from the decision of three member bench so constituted. The judgement is pronounced in the open court without indicating who authored an opinion or whether there were any dissents. All judicial decisions are rendered in the name of the court as a whole, and no individual judge must take responsibility for a decision. This is to eliminate personal favouritism and political consideration which will affect judicial independence which is a fundamental issue in the civil law systems. This will help the judges to render decisions unaffected by partisan concerns or external pressures. The appeal on the judgement is only to the courts of Assistant Sessions Judges. Since the administration of justice is the main duty of the state, no court fee can be levied. Each *Nyaya Panchayat* has power to issue summons, to proceed *exparte* and to levy execution through attachment orders with the help of the state force. There is no need of thousands pages judgement to prove that judges are so learned (which, from another point of view, is very difficult to be understood by the common people); written judgement should not exceed more than five pages and it should be maintained as official records. The higher judiciary always has the power to control and to supervise the functions of the *Nyaya Panchayats*. The state should provide good salary, living quarters and conveyance facilities to judges. The total expense for running the system efficiently can be divided between State and Centre governments, that is, 40% by each State and 60% by the Central government. Every Judge of a *Nyaya Panchayat* and every person employed in the discharge of any duties or in the exercise of any power

[24]Sol M. Linowiz, *The Betrayed Profession: Lawyering at the End of the Twentieth Century*, New York: Charles Scribner's Sons, 1994, 40.

vested in a *Nyaya Panchayat* shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code and Prevention of Corruption Act 1947.[25]

6.4. Relevance of *Nyaya Panchayat* in the Present Indian Situation

Pendency of large number of cases in the courts challenges the Indian judicial system today. In this connection, we may recall recent reports from Bangalore where a telecom company had filed a staggering 73,000 cases in a single day. These 73,000 cases were filed under section 138 of the Negotiable Instruments Act (cheque bouncing).[26] Such development makes pendency unavoidable. The judge can take up a maximum number of 10 to 15 cases a day. Even if he takes up 100 cases a day, it will not help to solve the problem of pendency. The above explained situation compels me to raise the question, "Why can't we revive *Nyaya Panchayat* again?" Like the village *panchyats*, *Nyaya Panchayats* have been perceived as reviving an important feature of traditional community life in India. Even when the intervening "swing of the pendulum is in favour of centralization," which occurred during the Moghul and British eras, is acknowledged, administration of justice by villagers and, therefore, decentralization is perceived as a "swing back" to the "historic past and .... deep rooted sentiment."[27] The revivalist ideology is one important element accounting for the creation and maintenance of the *Nyaya Panchayat* system. The fervour for "democratic decentralization" and the institutionalization of the *Panchayat Raj* system are contributing to the revival of *Nyaya Panchayat* again. The value of access to state justice is another theme which calls for the revival of *Nyaya Panchayats*. Administration of justice could be gotten "at the door-step of the village" only through *Nyaya Panchayats*. Then, justice would be easy and cheap, less procedure-ridden, more informal and flexible and more community based.[28] *Nyaya Panchayats* would be carriers of the secular, egalitarian, modernistic, legal ideology and, thus, assist in the desired transformation of society. The Law Commission, in its Fourteenth Report, stresses the

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[25]*Report of the Expert Committee on Karnataka Panchayat Raj Act, 1993* (Submitted in March 1996), 64.

[26]"Pendency of Litigation Troubles," *Times of India*, December 23, 2007, 11.

[27]P. M. Baxi, "Access, Development and Distributive Justice," *Indian Law Institute Journal* 18 (1976), 357-430.

[28]T. Bastedo, *The Judiciary in Bihar* (Unpublished Doctoral Dissertation, Duke University, 1969), 194-5.

"educative value of *Nyaya Panchayats*: just as village *panchayats* would educate the villager in the art of self-government, so would *Nyaya Panchayats* train him in the art of doing justice between fellow-citizens and instil in him a growing sense of fairness and responsibility."[29] The *Nyaya Panchayats* are also visualized as the lowest rungs of the state system of administration of justice. This will be a very useful device to prevent court congestion in the country. Finally, *Nyaya Panchayats* are supposed to combine some features of the state legal system (e.g., formal principles of organization and operation, hierarchy, oversight and control) with some features of community dispute-handling process (e.g., informality, flexibility). Thus, *Nyaya Panchayats* will be one of the vital instruments that would establish speedy and easy justice to the people of India.

7. Conclusion

The judicial administration of the country is in a disturbing condition and requires numerous structural changes to impart justice in an easy and speedy manner. Hence, there should be a set up which would mark a departure from the functioning of existing court room system and would follow an informal approach like *Nyaya Panchayats* with a view to resolve disputes by consensus, wherever possible, and to provide justice at the doorsteps of the rural people, particularly to those who are financially weak and are unable to go outside the village for filing suits in the courts. Article 40 of Indian Constitution, which directs the State to take steps to organize village *panchayats* and endow them with such powers and authority as may be necessary to enable them to function as units of self-government, has to be appreciated afresh in the light of the mandate of the new Article 39A which compels State to impart equal justice and free legal aid to all citizens of the country.[30]

We live in an age of alternatives. The quest for judicial alternatives has been a subject for national and international debates, academic discussions, and political juggleries. Justice delivered through judicial mechanisms has become inaccessible to a common man. The destiny of India, we believe, rests in the deliverance of the people from ignorance and insecurity to deep sense of self-reliance and democratization of justice delivery system through *nyaya panchayats*.

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[29]Bastedo, *The Judiciary in Bihar*, 24.

[30]The Law Commission, 114th Report, August 1986 (Chapter V, para 5.3).

Journal of Dharma 32, 3 (July-September 2007), 311-316

BOOK REVIEWS

George Edayadiyil, *Exodus Event: Its Historical Kernel*, Bangalore: Asian Trading Corporation, 2007, ISBN: 81-7086-429-1.

Dr. George Edayadiyil's book, *Exodus Event: Its Historical Kernel*, explores the historical kernel of Exodus in the light of the extant biblical and extra biblical texts and archaeological material. Exodus is an issue on which no one expects consensus due to the mysterious archetypal nature of its narrative that combines history, social memory, faith, cult, tradition and theology. Edayadiyil's is a humble but profound book that stands distinct for the rare sense of objective balance about a strongly debated issue, the historical kernel of the Pentateuchal text of the Exodus in the Old Testament. There is a commendable body of literature on it in various languages. The Exodus movement as described in the Pentateuch begins with liberation struggles in Egypt (Exodus 1-14), the land of slavery, and further it speaks of the first phase of the formative struggle of the Jewish community (Exodus 16 to Deuteronomy 40). Charged with the energy of liberation, the book helps us experience a massive current of energy. In different chapters the book recounts the antecedents of the Exodus Event, the chronology of the Egyptian and Canaanite contexts, the nature and identity of the supposed proto-Israelite groups in Egypt and Canaan, the historical probability of the Event against the background of the various settlement theories and the geographical location. The book very briefly recapitulates the ancient Near Eastern history (related to the Exodus narratives of the Bible) that is divided into the archaeological periods of the Early Bronze Age (3100-2000), Middle Bronze Age (2000-1550), Late Bronze Age (1550-1200 BCE) and Iron Age (1200-586 BCE). The author argues that the existence of slavery and persecution in Egypt, as described in the first chapter of the book of Exodus is borne out by history.

The historical basis of the Exodus, the main concern of the book, has been variously argued by scholars from divergent perspectives, which according to the author, range between the pan-historical and pan-mythical. The central argument of the author is that the biblical story of the Exodus is faith history and not a chronicle. As there are no extra-biblical parallels to establish the veracity of the biblical narratives, the author seeks the probabilities of an Israelite presence in Egypt in the light of the available archaeological and extra-biblical documents. Another argument relates to the identification of the group of people called Israelites in

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Canaan of the late 13th century BCE as evidenced by the reference to the Israelites' presence in the Merneptah Stele. The author thinks that they resemble the *Habiru/'Apiru/SA.GAZ* of the Near Eastern texts. Many scholars believe that an earlier *'Apiru* settlement involving some part of the tribes was later incorporated into the Israelite confederacy. The various settlement traditions could not disprove the presence of the proto-Israelites in the late 13th century BCE. The author rightly remarks that the impact of the Exodus on the settlements was never in the magnitude described in the biblical narratives. At the same time, he argues for the plausibility of the Exodus Event in the light of certain extra-biblical references. He also argues that the lack of evidence for the biblical conquest model does not in any way disprove the Egyptian sojourn and Exodus Event. His strong presumption is that the nature of settlement does not prove or disprove the possibility of the Exodus. The author underlines the fact that there was a great movement of people across Canaan at the time of the Exodus, and that there were Israelites among them. He rightly presumes that the political chaos of Canaan would have helped the emergence of the Hebrew people.

The author seems to follow the views of the humanists who argue that the Exodus Event could not have taken place earlier than the reign of Ramesses II (c. 1290-1224 BCE). The terminal date of the Exodus is established by them on the basis of the mention of the defeat of Israel in the land of Canaan as seen on Pharaoh Merneptah's Victory Stele (c. 1209 BCE). However, the Egyptologists and archaeologists ascribe the Event to a few centuries anterior to this. In fact, there are three periods posited for the Exodus. They are 1540, 1446 and 1250 BCE. Archaeological evidence helps us identify the Exodus with the expulsion of the Hyksos from Egypt around 1570-50 BCE. The discovery of the Merneptah Stele that mentions Israel now forces us to admit that Israel was already in Canaan at the time of Merneptah. The expulsion of the Hyksos seems to match well with the story of the Exodus. Several scholars like Reford, Menetho, and others identify the Jews with the Hyksos, and the Exodus with the expulsion of the Hyksos from Egypt by Ahmose who founded the 18th dynasty (1570-50 BCE) for there was no other recorded mass exit from Egypt in the past. All Hyksos were not pro-Israelites as is evident from the Pentateuchal allusion to those expelled from Egypt as a 'mixed multitude'. The Egyptians as well as the Hyksos saw this as a great event: the former as a great military victory and the latter as a great emancipative victory.

Archaeologists show lack of evidence of occupation in Sinai during the Late Bronze Age probably due to the expulsion of the Hyksos that accompanied the scorched earth operation of Ahmose's march to Sharuhen (Tell Ajjul?), and suppression of the region for three years. The presence of Hyksos at Tell ed Daba (Avaris?) is archeologically attested to a certain extent. We know from contemporary Egyptian records that they were defeated and forced to recede to Canaan. The Middle Bronze Age predatory destructions seem to fit well with the conquest of Canaan by Joshua. During Amenhotep II's reign (1453-1419 BCE) about 3600 Apirus and 15200 settlers of Shasu were taken captives from Canaan, some of whom were obviously Hebrews. There is a strong presumption that 'Apiru' is 'Hapiru' and that the word 'Hebrew' derives from the word 'Hapiru'. Further, topographical lists of Canaan attest the Hebrew presence in Canaan during the period. The land acquired the name 'Israel' when the twelve 'Hapiru' tribes formed a confederacy in the age of Merneptah.

As the author rightly maintains, the archaeological data reveal that the Exodus as portrayed in the Pentateuchal narratives never happened. Moses, Aaron, Phineas, Joshua, the King of Arad, and Sihon the Amorite, and their actions as portrayed in the Bible seldom have archaeological corroboration, for the biblical narration is a later version of archaic oral tradition told in mythical embellishments. The author agrees with the widely accepted view among historians and archaeologists that there is a time lag of centuries between the historical kernel and its embellished version in the Pentateuch. Archaeologists have pointed out that several cities mentioned in the Pentateuch were non-existent. If Moses had written the Pentateuch in either 1540, 1446, or 1250 BCE, he would not have included accounts of non-existent cities. Obviously, the text received the written format in post-exilic times, probably between 490-458 BCE. Motifs of the Pre-exilic prophets, Isaiah, Jeremiah, and Hosea, which suggest some familiarity of an Exodus from Egypt, would have us believe that some of the traditions in the Pentateuchal narrative are pre-exilic.

George Edayadiyil's book, seeking to present what is truly historical about the Pentateuchal narration of the Exodus Event, abstains from the technical niceties of controversies about the identification, dating and location of the Event, which often tend to leave the reader in utter confusion. It is an epistemological predicament that the author is forced to confront. He engages in a creative encounter with the predicament and marvellously succeeds in the most difficult task of ferreting out a

reasonably balanced conclusion and rendering the historicity of the Event plausible to the non-specialist reader in logical terms and scholarly ways. It is an eminently readable work.

Rajan Gurukkal

Joseph Thekkedath, *A Short History of Christianity in India*, Bangalore: Kristu Jyoti Publications, 2007, ISBN: 81-87370-43-2.

The title *A Short History of Christianity in India* makes it very obvious that this book traces the origin, development, and status of Christianity in India. It is a collection of facts, data, records, theories, and arguments that documents the emergence and growth of Christianity in India, a land of diverse cultures and innumerable gods.

The book starts by mentioning two *claims* that are prevalent among various scholars regarding the origin of Christianity in India. One claim attributes the emergence of Christianity in India to the work of St. Thomas, one of the twelve apostles of Christ, and other group to the work of merchants and missionaries from East Asian or Persian churches. Each claim has been critically examined by presenting evidences and data which provides an opportunity to the reader to examine it for himself or herself and reach suitable conclusions.

A clear demarcation is done in the time periods in which Christianity developed in India. Author also gives us detailed information about the different *sources* that are used for the study of emergence and development of Christianity in India, like foreign documents, tradition in the country, and inscriptions and monuments. Author also tries to evaluate the system under which church in India worked during different periods.

The book gives a detailed account of the hurdles faced by the church to establish its roots in India. Christian missionaries and people who converted to Christianity were cruelly persecuted in many parts of India. Support was given by various Christian rulers of the west apart from the efforts made by various popes, as the heads of Catholic Church, to spread Christianity in India.

This book also gives due importance to the work of various missionaries like the Franciscans, Dominicans, Augustinians, Jesuits, Salesians, etc., in the development of Christianity in India and the sacrifices made by them. They undertook various social reforms and welfare measures in many parts of India.

The book gives an open account of the *conversion tactics* adopted by the church during various ages and the religious intolerance followed by the church, the *partial attitude* of various Christian rulers in India towards their non-Christian population and *the incentives given to converts*. It also provides a vivid description about the *financial capacity and change in economic status* of Indian Christians from time to time.

There were various catholic missions, which played a very prominent role in the spread of Christianity in different parts of India. It is praiseworthy of these missions that they worked among the tribes and rural Indian population. Their work has been given prominent place by the author in his study of the history of Christianity in India.

Complementing the book is the information that it gives about the non-catholic Christians, their emergence, development, and work mentioned in the last part of the book.

The book *A Short History of Christianity in India* is, indeed, an asset in the study of Christianity in India from its origin. The language used in the book is simple and definitely serves its purpose of helping the students in the study of Christian history in India.

Aparna Vincent

Richard J. Cassidy, *Four Times Peter*, "INTERFACES," Collegeville, Minnesota: Liturgical Press, 2007, ISBN: 9780814651780.

Richard J. Cassidy's *Four Times Peter* is an interesting and creative study of Peter in the four Gospels and at Philippi. The first question that came to my mind after seeing the title was "Why not five times Peter?" as there is ample material for the present reader to have a fresh reading of the text in the manner the Gospels were received at Roman Philippi. The book brings to our attention an interesting and imaginative approach to reading the Scriptures.

This book is from the series "Interfaces," edited by Barbara Green, an innovative venture in which the Bible is read and interpreted with such a scholarly passion that it inspires both students and scholars. The project deserves special appreciation from all readers.

In his book, *Four Times Peter*, Richard J. Cassidy uses insights from narrative criticism to bring out new perspectives on the character of Peter as portrayed in the Gospels: He employs these techniques: a) to analyse the various elements that serve as building blocks (character, plot, time and

setting) for the overall story, b) to analyse the literary techniques the author employed, and c) to make assumptions about the readers for whom the story was originally intended.

The author finds that after Jesus, Peter plays the most important role in terms of the plot of each of the Gospels. The evangelists are concerned with the ways Peter both advances and frustrates Jesus' mission and how Jesus deals with Peter.

In this study, the role of Peter is analysed to determine how a particular scene fits with the overall story of Jesus in a particular Gospel. So, each Gospel is taken as a totally independent unit.

The author's opinion is that each evangelist envisioned his Gospel being read throughout the Christian world. This is in marked contrast to those scholars who try to read each Gospel for clues to find for which specific community the particular Gospel was written. The study proposes that the evangelist envisioned two principal categories of readers: a) the paradigmatic reader and b) a wide spectrum of other readers and hearers.

The book is divided into six chapters. The first chapter provides an introduction, methodology, and orientation to read the rest of the book. In the second, third, fourth, and fifth chapters the author presents Peter from the perspective of Mark, Luke, Mathew, and John, respectively. From each of these Gospels Cassidy delineates the character of Peter with exceptional clarity and focus. In each, we find the future of Peter extending beyond the Gospels' final stage, with Jesus assigning to him the special role as the leader of the group of disciples.

In the final chapter, "The Reception of the Four Gospels at Philippi," the author imaginatively re-creates the way the Gospels might have been received in the Pauline community at Roman Philippi. Although this remains at the level of conjecture, it may help us to understand how the message can be interpreted by the present reader as well.

In general, Cassidy uses narrative criticism and reception history to bring out the role of Peter in the Gospels. The book as a whole is challenging for all students and scholars of the Gospels. The author has impressively brought out the important role of Peter in all the Gospels, with a special emphasis on the reception of the Gospels by the early Pauline community at Philippi.

George Edayadiyil

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